

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102–3, 102–5, 102–33, 102–34, 102–35, 102–36, 102–37, 102–38, 102–39, 102–40, 102–41, 102–42, 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, 102–83, 102–85, 102–117, 102–118, and 102–192

[FMR Case 2025–05; Docket No. GSA–FMR–2025–0005; Sequence No. 1]

RIN 3090–AK92

Federal Management Regulation; Aligning the Federal Management Regulation (FMR) With the Administration’s Deregulatory Priorities

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing a final rule to streamline and update multiple parts of the FMR to ensure adherence to statutory requirements and improve the effectiveness of the management of aviation, Federal advisory committees, mail, motor vehicles, personal property, real property, and transportation.

DATES: *Effective date:* December 16, 2025.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The FMR was first published June 24, 1999, with the intention of improving GSA’s regulatory system. While there have been additions and revisions on some parts over the years, several portions of the regulation have not been revised since they were added, and the regulation itself had not undergone a general review prior to 2025. This final rule amends the FMR to align with the Administration’s priorities set forth in Executive Order (E.O.) 14192, *Unleashing Prosperity Through Deregulation*, dated January 31, 2025, and E.O. 14219, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, dated February 19, 2025. These

amendments are based on a complete review of each FMR Part for consistency with law and Administration policy and a focus on the best reading of the underlying statutory authority or prohibition. As E.O. 14192 states, agencies must work to alleviate the burden on those impacted by regulations, and to that end, GSA has streamlined and simplified regulations with an underlying statutory requirement. The review also focused on minimizing regulations not required by law. Regulations rescinded in this rulemaking are not explicitly required by statute to be issued as GSA regulations in the FMR, or are duplicative of regulations specified by other agencies, and are not necessary to carry out the Administrator’s functions under subtitle I of title 40, United States Code. If regulations were found to be duplicative, their removal does not change either the underlying statute or any regulations maintained by other agencies, and GSA has determined that reducing the number of redundant regulations will lead to less confusion, as there will be one source for the regulatory requirement. Where helpful, GSA will communicate policies and information that has been removed from the FMR in non-regulatory guidance documents without editorial changes. Some of these non-regulatory guidance documents can be found on <https://www.gsa.gov/directives-library>, or will be consolidated on <https://www.gsa.gov/policy-regulations>. Statutory provisions, the revised FMR, and non-regulatory guidance documents will establish a practical and authoritative basis for efficiently accomplishing mission objectives.

II. Discussion of Final Rule—Summary of Changes

GSA is removing portions of the regulation that are not required by statute and removing outdated provisions. A summary of the changes is as follows:

Part 102–3—Federal Advisory Committee Management: Revised. GSA streamlined and consolidated this FMR part to improve Federal advisory committee management policies and processes, remove unnecessary language and information, and increase accountability for Federal advisory committee operation.

Part 102–5—Home-to-Work Transportation: Removed and reserved part. Retained content now included in part 102–34.

Part 102–33—Management of Government Aircraft: Revised definitions to include only relevant definitions. Consolidated remaining

regulations and removed procedural instructions, including appendix A.

Part 102–34—Motor Vehicle Management: Revised. GSA streamlined this FMR part by eliminating six subparts and 54 sections considered to be nonregulatory guidance. Consolidated and revised definitions and moved statutory requirements from FMR part 102–5.

Part 102–35—Disposition of Personal Property: Revised. Consolidated and revised definitions from FMR parts 102–36 through 102–42.

Part 102–36—Disposition of Excess Personal Property: Revised and moved definitions to FMR part 102–35. Removed procedural instructions. Removed GSA’s donation of firearms to state and local government activities based on the cessation of the firearm donation program.

Part 102–37—Donation of Surplus Personal Property: Revised and moved definitions to FMR part 102–35. Removed procedural instructions, including appendices A, B, and C. Removed GSA’s donation of firearms to state and local government activities based on the cessation of the firearm donation program.

Part 102–38—Sale of Personal Property: Revised and moved definitions to FMR part 102–35. Removed procedural instructions. Updated requirements for the designation or authority to sell personal property.

Part 102–39—Replacement of Personal Property Pursuant to the Exchange/Sale Authority: Revised and moved definitions to FMR part 102–35. Removed procedural instructions. Removed the reporting requirement for exchange/sale activity. Removed the exchange/sale prohibition on FSC Class 1005 weapons when conducting exchanges or sales with the original equipment manufacturer.

Part 102–40—Utilization and Disposition of Personal Property with Special Handling Requirements: Revised and moved definitions to FMR part 102–35. Removed procedural instructions, including appendices A and B. Removed GSA’s donation of firearms to state and local government activities based on the cessation of the firearm donation program.

Part 102–41—Disposition of Seized, Forfeited, Voluntarily Abandoned, and Unclaimed Personal Property: Revised and moved definitions to FMR part 102–35. Removed procedural instructions.

Part 102–42—Utilization, Donation, and Disposal of Foreign Gifts and Decorations: Revised and removed procedural instructions.

Part 102-71—General: Part revised to include only relevant definitions and consolidate remaining real property regulations required by statute or necessary on significant policy grounds, including installing, repairing, and replacing sidewalks; the Fire Administration Authorization Act of 1992 (Pub. L. 102-522); rent; occupant emergency programs; prohibition of portable heaters, fans, and similar devices; tobacco policy; and use of Federal real property to assist the homeless.

Part 102-72—Delegation of Authority: Removed and reserved part.

Part 102-73—Real Estate Acquisition: Removed and reserved part.

Part 102-74—Facility Management: Removed subparts A, D, and F. Subpart B language on occupant emergency programs; prohibition of portable heaters, fans, and similar devices; and tobacco policy was revised and moved to §§ 102-71.55 through 102-71.115. The remainder of Subpart B was removed. Subpart C will be removed in January 2026 to coincide with the Department of Homeland Security's promulgation of regulations for the protection of Federal property. Subpart E was revised and moved to § 102-71.20.

Part 102-75—Real Property Disposal: Removed and reserved part. Subpart H was moved to § 102-71, subpart B.

Part 102-76—Design and Construction: Removed and reserved part.

Part 102-77—Art in Architecture: Removed and reserved part.

Part 102-78—Historic Preservation: Removed and reserved part.

Part 102-79—Assignment and Utilization of Space: Removed and reserved part.

Part 102-80—Safety and Environmental Management: Removed and reserved part. Section on the Fire Administration Authorization Act of 1992 (Pub. L. 102-522) was revised and moved to §§ 102-71.25 through 102-71.45.

Part 102-81—Physical Security: Removed and reserved part.

Part 102-82—Utility Services: Removed and reserved part.

Part 102-83—Location of Space: Removed and reserved part.

Part 102-85—Pricing Policy for Occupancy in GSA Space: Removed and reserved part. Language on rent was revised and moved to § 102-71.50.

Part 102-117—Transportation Management: Revised the transportation procurement requirements for Federal agencies. Eliminated seven subparts and 56 sections considered to be nonregulatory guidance.

Part 102-118—Transportation Payment and Audit: Revised due to the elimination of the GSA Transportation Audits Division. Under the new framework, most functions previously performed by this division have been delegated directly to Federal agencies. The Administrator's delegation of authority, based on 31 U.S.C. 3726, grants agencies full authority to conduct—prepayment audits; post-payment audits; or comprehensive audits combining both prepayment and post-payment reviews. Modifications seek to improve financial oversight and potentially reduce Government expenses. Eliminated 78 regulatory sections and one subpart.

Part 102-192—Mail Management: Revised. Removed subpart C, which established regulatory requirements for OGP as to the “guidance and assistance” provided to agencies under 44 U.S.C. 2904(b). Removed the agency requirement for sustainable activities per the rescission of E.O. 13514.

III. Regulatory Impact Analysis

GSA conducted an economic analysis of the proposed changes to the FMR and determined that during the first and subsequent years after publication of the rule, there are economic impacts associated with this rule that result in cost avoidance for the Government and public entities. The primary driver for making changes to the FMR is to increase its usability. The significant streamlining and reduction in the text of the FMR enhances the clarity and intuitiveness of the FMR for all employees that need to read and be familiar with it, which saves time. Additionally, several requirements were removed from the FMR related to communication, reporting, and research, which will ease the workload for government employees. GSA estimates the discounted total overall net cost avoidance over a 10-year period is \$772,189,519 at a 3-percent discount rate and \$637,329,436 at a 7-percent discount rate. GSA estimates this economic impact by multiplying the estimated time required to review the regulation and guidance implementing the rule by the estimated hourly compensation of the employee performing the task. For the calculations, GSA used the estimated hourly compensation¹ using the U.S. Office of Personnel Management's 2025 General Schedule (GS) Rest of United

States Locality Pay Table,² a full fringe benefit cost factor of 36.25 percent,³ and an overhead cost factor of 12 percent as provided by the Office of Management and Budget (OMB) Circular A-76.⁴ The following section is a list of activities related to regulatory compliance that GSA anticipates will occur. These assumptions were generated based on internal GSA expertise.

1. Economic Impact to Government

A. Reduction of Regulatory Text

Due to reduced page count, GSA assumes Federal employees will no longer need to familiarize themselves with the removed duplicative content in the FMR. This is due to the fact that FMR sections were mainly taken out, not added in. GSA identified these time savings based on employees no longer needing to familiarize themselves with sections of the FMR that have been reduced or removed. GSA assumes that the majority of employees primarily familiarize themselves with the FMR by reading the sections that are most relevant to them. This results in cost avoidance for the time saved by the Federal employees reading the FMR.

To calculate economic impact, GSA estimated the number of employees that needed to familiarize themselves with different sections from the FMR that were removed, multiplied by the number of page reductions for each section, multiplied by the assumed average reading speed per page. This is the estimated amount of time saved by the reduction of pages. This number is multiplied by the hourly cost of the employee based on the average GS level that no longer needs to familiarize themselves with the removed duplicative content. GSA assumes that in every subsequent year, these employees would spend half the amount of time to refresh their knowledge of that section as they did in the first year. GSA assumes that this reading/familiarization does not take place in one sitting at one time, and is likely something that happens over the course of the year as these employees reference the section of the FMR as needed. It should be noted that in the calculations for this section, we only identified cost savings for GS-11s, GS-12s, GS-13s, and GS-15s.

² General Schedule (https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/25Tables/html/RUS_h.aspx).

³ OMB Memo M-08-13, dated March 11, 2008 (https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2008/m08-13.pdf).

⁴ OMB Circular A-76 (https://georgewbush-whitehouse.archives.gov/omb/circulars/a076/a76_incl_tech_correction.html).

¹ Computing Hourly Rates of Pay Using the 2,087-Hour Divisor (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/>).

GSA estimates that in Year 1, for GS-11s, the total cost avoidance is \$589,248 (= 3,000 employees that GSA policy subject matter experts (SMEs) estimate need to be familiar with various FMR sections that were removed \times 3.3 hours saved on average from each GS-11 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$59.52 [GS-11 hourly rate, including fringe benefits]). GSA estimates that in Years 2–10, for GS-11s, the cost avoidance is \$294,624 (= 3,000 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times 1.65 hours saved on average from each GS-11 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$59.52 [GS-11 hourly rate, including fringe benefits]).

GSA estimates that in Year 1, for GS-12s, the total cost avoidance is \$1,542,002 (= 15,437 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times 1.4 hours saved on average from each GS-12 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed

section \times \$71.35 [GS-12 hourly rate, including fringe benefits]). GSA estimates that in Years 2–10, for GS-12s, the cost avoidance is \$771,001 (= 15,437 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times .7 hours saved on average from each GS-12 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$71.35 [GS-12 hourly rate, including fringe benefits]).

GSA estimates that in Year 1, for GS-13s, the total cost avoidance is \$291,850 (= 3,440 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times 1 hours saved on average from each GS-13 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$84.84 [GS-13 hourly rate, including fringe benefits]). GSA estimates that in Years 2–10, for GS-13s, the cost avoidance is \$145,925 (= 3,440 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times .5 hours saved on average from each GS-13 that no longer is required to be familiar with this

removed section, based on an estimated average reading speed of the removed section \times \$84.84 [GS-13 hourly rate, including fringe benefits]).

GSA estimates that in Year 1, for GS-15s, the total cost avoidance is \$8,912 (= 229 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times .33 hours saved on average from each GS-15 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$117.93 [GS-15 hourly rate, including fringe benefits]). GSA estimates that in Years 2–10, for GS-15s, the cost avoidance is \$4,591 (= 229 employees that GSA policy SMEs estimate need to be familiar with various FMR sections that were removed \times .17 hours saved on average from each GS-15 that no longer is required to be familiar with this removed section, based on an estimated average reading speed of the removed section \times \$117.93 [GS-15 hourly rate, including fringe benefits]).

A breakdown of the undiscounted total annual estimates cost avoidance by GS levels by year from the reduction of regulatory text is provided in the table below.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Cost avoidance for GS-11s	\$ 589,248	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624	\$ 294,624
Cost avoidance for GS-12s	\$ 1,542,002	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001	\$ 771,001
Cost avoidance for GS-13s	\$ 291,850	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925	\$ 145,925
Cost avoidance for GS-15s	\$ 8,912	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591	\$ 4,591

B. Reduction in Regulatory Familiarization Materials and Training

The removal of multiple sections of the FMR resulted in certain trainings no longer being required. These trainings were previously required in order to become familiar and knowledgeable about the various sections of the FMR, that have since been deleted. Due to a decrease in trainings that are required in the FMR, GSA assumes that Federal employees will spend less time receiving, delivering, or updating relevant training materials. These trainings related to personal property (supplemental trainings from deleted sections no longer need to be reviewed),

and the real property section (Art in Architecture no longer develops or delivers trainings; Real Estate Acquisition—supplemental training materials from deleted sections no longer need to be reviewed; Location of Space—multiple trainings related to new construction and leasing no longer need to be developed, updated, and reviewed). These sections were all significantly reduced, and therefore, less time and effort will be spent on their associated trainings. This results in cost avoidance by the time saved by the Federal employees that receive, deliver, or update these training materials.

To calculate the economic impact of the reduction in receiving trainings, GSA estimates the number of Federal employees that needed to receive a training that was removed from the FMR, multiplied by the average time to take the training. This is the estimated amount of time saved by the reduction in receiving training. This number is multiplied by the hourly employee cost based on the average GS level of the employee receiving the training.

GSA estimates that in Year 1, the total cost avoidance from reduction in receiving trainings or training materials is \$10,971,022 (= 882 hours \times \$71.35[GS12]) + (128,572.5 hours \times

\$84.84[GS13]). GSA estimates that in years 2,4,6,8, and 10, the total cost avoidance from reduction in receiving training is \$10,842,552 (=127,800 hours × \$84.84[GS13]). GSA estimates that in years 3,5,7,9, the total cost avoidance from reduction in receiving training is \$10,965,713 (=829 hours × \$71.35[GS12] + (128,554.5 hours × \$84.84[GS13])).

To calculate the economic impact of the reduction in delivering trainings, GSA estimates the number of Federal employees that needed to deliver a training that was removed from the FMR, multiplied by the average time to deliver the training. This is the estimated amount of time saved by the reduction in delivering training. This

number is multiplied by the hourly employee cost based on the average GS level of the employee delivering the training. GSA estimates that in Year 1, the total net cost from changes to the requirements in delivering trainings is \$1,584 (=27 hours × \$117.93[GS15]) – (7.5 hours × 100.26[GS14]) – (10hr × \$84.84[GS13])). GSA estimates that in Years 2,4,6,8, and 10, the total net cost impact is \$0. GSA estimates that in Years 3,5,7, and 9, the total cost avoidance is \$752 (=7.5 hours × 100.26[GS14])).

To calculate the economic impact of the reduction for updating trainings, GSA estimated the number of Federal employees that needed to update a training that was removed from the

FMR, multiplied by the average time to update the training. This is the estimated amount of time saved by the reduction in updating trainings. This number is multiplied by the hourly employee cost based on the average GS level of the employee updating the training. GSA estimates that in Year 1, the total net cost avoidance from the reduction in updating training is \$21,306 (=25.5 hours × \$100.26[GS14]) + (221 hours × \$84.84[GS13])).

A breakdown of the undiscounted total annual estimated cost avoidance by year from the reduction in regulatory familiarization materials and training is provided in the table below.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Cost avoidance from reduction in receiving trainings or training materials	\$ 10,971,022	\$ 10,842,552	\$ 10,965,713	\$ 10,842,552	\$ 10,965,713	\$ 10,842,552	\$ 10,965,713	\$ 10,842,552	\$ 10,965,713	\$ 10,842,552
Cost avoidance from reduction in delivering trainings or training materials	-\$1,584	\$ -	\$ 752	\$ -	\$ 752	\$ -	\$ 752	\$ -	\$ 752	\$ -
Cost avoidance from reduction in updating training materials	\$ 21,306	\$ -	\$ 19,656	\$ -	\$ 19,656	\$ -	\$ 19,656	\$ -	\$ 19,656	\$ -

C. Reduction in Regulatory Reporting

The removal of multiple sections of the FMR has resulted in multiple regulatory reports/reporting no longer being required. Due to a decrease in reports and reporting that is required in the FMR, GSA assumes that Federal employees will spend less time developing and reviewing reports.

These reports are primarily related to the FMR sections on motor vehicles (removed exempted motor vehicles report), personal property (removed eFAS and ESD module reports), real property (Art in Architecture—removed annual NAR report), transportation (removed the requirement for agencies to report on all paid transportation invoices) and mail (removed mail

expenditure report). These reports were previously required by the FMR, and their removal reduces the workload of employees. This results in cost avoidance by the time saved by the Federal employees that develop and review reports. It should be noted that in the calculations for this section, we only identified cost savings for GS–11s, GS–12s, GS–13s, and GS–14s.

To calculate the economic impact of the reduction in required reports and reporting, GSA estimated the number of employees needed to develop and review these reports, multiplied by the average time to develop and review these reports. This is the time saved by the reduction in reports. This number is multiplied by the hourly employee cost based on the average GS level of the

employee developing and reviewing the reports.

In Year 1–10, GSA estimates that for GS–11 employees, the total cost avoidance is \$166,656 (=2,800 hours × \$59.52). In Year 1–10, GSA estimates that for GS–12 employees, the total cost avoidance is \$3,568 (=50 hours × \$71.35). In Year 1–10, GSA estimates that for GS–13 employees, the total cost avoidance is \$848 (=10 hours × \$84.84). In Year 1–10, GSA estimates that for GS–14 employees, the total cost avoidance is \$201 (=2 hours × \$100.26).

A breakdown of the undiscounted total annual estimated cost avoidance by GS levels by year from the reduction in regulatory reporting is provided in the table below.

	year 1	year 2	year 3	year 4	year 5	year 6	year 7	year 8	year 9	year 10
Cost avoidance for GS 11s	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656	\$ 166,656
Cost avoidance for GS 12s	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568	\$ 3,568
Cost avoidance for GS 13s	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848	\$ 848
Cost avoidance for GS 14s	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201	\$ 201

D. Reduction in Additional Regulatory Activities

Due to a reduction in additional activities required in the FMR, GSA assumes Federal employees will be completing fewer required activities related to the FMR. These reduced activities include targeted Federal Advisory Committee Act (FACA) outreach (for FACA committee membership added in the April 2024 Final Rule (89 FR 27673, April 18, 2024)) and communications (no longer requiring public notice when removing excess personal property), a reduction in required updates to internal policies and plans (primarily related to agencies no longer being required to develop and execute sustainability plans), a consolidation of agency transportation systems (GSA will be consolidating procurement systems from other agencies), a reduction in Government Publishing Office (GPO) printing costs from reduced FMR page count, a reduction in the time to update content from the FMR that has been moved to desk guides, and a reduction in the amount of research and considerations needed to make decisions (primarily related to time saved by the removal of decision making considerations that were previously required for personal property). This results in cost avoidance from the time saved by Federal employees no longer required to complete these activities, as well as other associated costs.

To calculate the economic impact of the reduction in required outreach and communications, GSA estimated the number of Federal employees that needed to develop and send these communications, multiplied by the average time to develop and send these communications. This is the estimated amount of time saved from the reduction in outreach and communications. This number is multiplied by the hourly employee cost based on the average GS level of the employee that develops and sends these

communications. GSA estimates that in Year 1, the total net cost avoidance from the reduction in required outreach and communications is \$4,298,968 $(= (30,000 \text{ hours} \times \$49.20[\text{GS9}]) + (35,014.5 \text{ hours} \times \$84.84[\text{GS13}]) - (880 \text{ hours} \times \$100.26[\text{GS14}]) - \$59,434 [\text{Additional annual Federal Register publishing costs}])$. GSA estimates that in Year 2, the total net cost avoidance from the reduction in required outreach and communications is \$2,944,455 $(= (30,000 \text{ hours} \times \$49.20[\text{GS9}]) + (19,049.00 \text{ hours} \times \$84.84[\text{GS13}]) - (880 \text{ hours} \times \$100.26[\text{GS14}]) - \$59,433.60 [\text{Additional annual printing costs}])$. GSA estimates that in Year 3–10, the total net cost avoidance from the reduction in required outreach and communications is \$1,422,680 $(= (30,000 \text{ hours} \times \$49.20[\text{GS9}]) + (1,112.00 \text{ hours} \times \$84.84[\text{GS13}]) - (880 \text{ hours} \times \$100.26[\text{GS14}]) - \$59,433.60 [\text{Additional annual printing costs}])$.

To calculate the economic impact of the reduction in required updates to internal policies and plans, GSA estimated the number of employees that needed to develop and update these policies and plans, multiplied by the average time to develop and update these policies and plans, multiplied by the frequency that these policies and plans needed to be updated. This is the estimated amount of time saved from the reduction in required updates to internal policies and plans. This is multiplied by the hourly employee cost based on the average GS level of the employee that developed and updated these policies and plans. GSA estimates that in Year 1, the total net cost avoidance from the reduction in required updates to internal policies and plans is \$47,292,413 $(= (800,000 \text{ hours} \times \$59.52[\text{GS11}]) - (493.5 \text{ hours} \times \$71.35[\text{GS12}]) + (240 \text{ hours} \times \$84.84[\text{GS13}]) - (3774 \text{ hours} \times \$100.26[\text{GS14}]) + (834 \text{ hours} \times \$117.93[\text{GS15}]) + (2 \text{ hours} \times \$144.91[\text{SES}]) - \$29,000 [\text{one time cost for updating FACA database}])$. GSA estimates that in Year 2, the total net

cost avoidance from the reduction in required updates to internal policies and plans is \$47,476,842.38 $(= (800,000 \text{ hours} \times \$59.52[\text{GS11}]) + (240 \times \$84.84[\text{GS13}]) - (2,829 \text{ hours} \times \$100.26[\text{GS14}]) + (1,050 \text{ hours} \times \$117.93[\text{GS15}]) + (2 \text{ hours} \times \$144.91[\text{SES}])$. GSA estimates that in Years 3–10, the total net cost avoidance from the reduction in required updates to internal policies and plans is \$47,570,697 $(= (800,000 \text{ hours} \times \$59.52[\text{GS11}]) + (240 \times \$84.84[\text{GS13}]) - (1,890 \text{ hours} \times \$100.26[\text{GS14}]) + (1,050 \text{ hours} \times \$117.93[\text{GS15}])$.

To calculate the economic impact of the consolidation of agency transportation services, GSA used its annual operating and maintenance costs for maintaining its current Transportation Management Services Solution as a baseline, multiplied by the number of agencies that will remove their current transportation systems by utilizing GSA's Transportation Management Services Solution. GSA estimates that in Years 1–10, the total net cost avoidance from the consolidation of these transportation services is \$15,645,936 $(= \$1,955,742 [\text{annual O\&M cost for GSA's Transportation Management Services Solution}] \times 8 [\text{Number of agencies that will remove their current transportation systems by utilizing GSA's Transportation Management Services Solution}])$.

To calculate the economic impact of the reduction in GPO publishing costs from reduced FMR page count, GSA estimates the average publishing costs for GPO to publish a single page, multiplied by the number of pages that were reduced from the FMR, multiplied by the average frequency with which the FMR would need to be printed by GPO. GSA estimates that in Years 1–10, the total net cost avoidance from the reduction in publishing costs is \$39,865 $(= 469 \text{ fewer printed pages} \times \$85 \text{ for GPO to print a page from MS Word})$.

To calculate the economic impact of moving content from the FMR to desk guides, GSA estimates the average cost of updating a section of the FMR based on the amount of time spent on updates, multiplied by the hourly employee cost based on the average GS levels of the employees involved. That number is multiplied by the number of sections that are removed from the FMR. GSA assumes these sections would need to be updated every 5 years on average. GSA estimates that in Year 1 and 6, the total net cost avoidance of moving content from the FMR to desk guides is 7,034,479 $(=((2,080 \text{ hours} \times \$84.84[\text{GS13}]) + (2,080 \text{ hours} \times \$100.26[\text{GS14}]) + (40 \text{ hours} \times$

$\$144.91[\text{SES}])) \times 18$ [number of sections wholly removed from FMR]).

To calculate the economic impact of a reduction in the amount of research and considerations needed to make decisions, GSA estimated the number of employees that needed to conduct additional research or considerations based on requirements in the FMR, multiplied by the average amount of time on average it would take to conduct this additional research. This is the estimated amount of time saved by the reduction in the amount of research and considerations needed to make decisions. This number is multiplied by the hourly employee cost based on the average GS level that is needed to

conduct this additional research. GSA estimates that in Years 1–10, the total net cost avoidance from the reduction in required outreach and communications is \$10,869,180 $(=(30,000 \text{ hours} \times \$49.20[\text{GS9}]) + (30,000 \text{ hours} \times \$59.52[\text{GS11}]) + (43,500 \text{ hours} \times \$71.35) + (51,160 \text{ hours} \times \$84.84[\text{GS13}]) + (1,610 \text{ hours} \times \$100.26[\text{GS14}]) + (5 \text{ hours} \times \$117.93[\text{GS15}]) + (10 \text{ hours} \times \$143.20[\text{US District Court Judge Average Hourly Rate}]))$.

A breakdown of the undiscounted total annual estimated cost avoidance by year from the reduction in additional regulatory activities is provided in the table below.

	year 1	year 2	year 3	year 4	year 5	year 6	year 7	year 8	year 9	year 10
Cost avoidance from reduction in outreach and communications	\$ 4,298,968	\$ 2,944,455	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680	\$ 1,422,680
Cost avoidance from reduction in updates to internal policies and plans	\$ 47,292,413	\$ 47,476,842	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697	\$ 47,570,697
Cost avoidance from consolidation of agency transportation services systems	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936	\$15,645,936
Cost avoidance from reduction in GPO Printing	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865	\$ 39,865
Cost avoidance from moving content to desk guides	\$ 7,034,479	\$ -	\$ -	\$ -	\$ -	\$ 7,034,479	\$ -	\$ -	\$ -	\$ -
Cost avoidance from reduction in additional research and considerations for decision making	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180	\$ 10,869,180

2. Economic Impact to Large and Small Entities

A. Reduction of Regulatory Text

Due to reduced page count, GSA assumes private sector employees will no longer need to familiarize themselves with the removed duplicative content in the FMR. This results in cost avoidance from the time saved by the private sector employees reading the FMR. To calculate economic impact, GSA estimated the number of private sector employees that need to familiarize themselves with the different sections of the FMR, multiplied by the number of page reductions for each section, then

multiplied by an assumed average reading speed per page. This is the estimated amount of time saved by the reduction of pages. This number is multiplied by the hourly cost of the private sector employee based on average GS level equivalents that no longer need to familiarize themselves with the removed duplicative content. GSA assumes that in every subsequent year, these private sector employees would spend half that time to refresh their knowledge of that section. GSA estimates that in Year 1, the total cost avoidance for GS13 equivalent employees is \$1,027,412 $(=12,110 \text{ hours} \times \$84.84)$. GSA estimates that in Years

2–10, the total cost avoidance for GS13 equivalent employees is \$513,706 $(=6,055 \times \$84.84)$. GSA estimates that in Year 1, the total cost avoidance for GS15 equivalent employees is \$19,688 $(=166.95 \text{ hours} \times \$117.93)$. GSA estimates that in Years 2–10, the total cost avoidance is \$10,030 $(=85.05 \text{ hours} \times \$117.93)$.

A breakdown of the undiscounted total annual estimated cost avoidance by private sector GS level equivalents by year from reduction in regulatory text is provided in the table below.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Cost avoidance for GS13 equivalents	\$ 1,027,412	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706	\$ 513,706
Cost avoidance for GS15 equivalents	\$ 19,688	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030	\$ 10,030

B. Reduction in Additional Regulatory Activities

Due to a reduction in additional activities required in the FMR, GSA assumes cost avoidance from the time saved by private sector employees that are no longer required to complete these activities. These reduced additional activities include a reduction in required forms, and a reduction in the amount of research and considerations needed to make decisions.

To calculate the economic impact of a reduction in the amount of research and considerations needed to make decisions, GSA estimated the number of private sector employees that needed to conduct additional research or considerations based on requirements in the FMR, multiplied by the amount of time on average it would take to conduct this additional research. This is

the estimated amount of time saved by the reduction in the amount of research and considerations needed to make decisions. This number is multiplied by the hourly cost of the private sector employee based on average GS level equivalents.

GSA estimates that in Year 1–10, the cost avoidance from a reduction in additional activities required by the private sector is \$1,532 (20 hours × \$76.61[estimated private sector salary]).

Due to a decrease in forms required in the FMR, GSA assumes that private sector employees will spend less time completing and submitting forms. This results in cost avoidance for the time saved by the private sector employees that no longer need to complete these forms.

To calculate economic impact, GSA estimated the number of private sector employees that needed to complete

required forms according to the FMR, multiplied by estimated average amount of time to complete these forms. This is the estimated amount of time saved by the reduction in forms. This number is multiplied by the hourly cost of the private sector employee based on average GS level equivalents.

GSA estimates in Year 1, the total cost avoidance from a reduction in required forms for the private sector is \$20,636 (=637.5 hours × \$32.37[estimated private sector salary]). GSA estimates in Year 2–10, the total cost avoidance from a reduction in required forms for the private sector is \$2,428 (=75 hours × \$32.37[estimated private sector salary]).

A breakdown of the undiscounted total annual estimated cost avoidance by year from the reduction in additional regulatory activities is provided in the table below.

	year 1	year 2	year 3	year 4	year 5	year 6	year 7	year 8	year 9	year 10
Additional cost avoidance from reduction in additional research and considerations for decision making	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532	\$ 1,532
Cost avoidance from reduction in required forms	\$ 20,636	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428	\$ 2,428

3. Total Overall Economic Impact

The undiscounted estimated total overall net cost avoidance over a ten-year period for public entities (large and small) is \$5,818,533. The undiscounted

estimated total overall net cost avoidance over a ten-year period for the Government is \$897,816,443. The undiscounted estimated total overall net cost avoidance over a ten-year period for both public entities and the Government

is \$903,634,975. The table below summarizes the undiscounted estimated total overall net cost avoidance over a ten-year period from deregulations made to the FMR.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total Impact
Total Cost Avoidance for Public (Large and Small Entities)- Net Impact	\$ 1,069,269	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 527,696	\$ 5,818,533
Total Cost Avoidance for Government - Net Impact	\$ 98,774,868	\$ 89,206,243	\$ 87,921,891	\$ 87,778,322	\$ 87,921,891	\$ 94,812,801	\$ 87,921,891	\$ 87,778,322	\$ 87,921,891	\$ 87,778,322	\$ 897,816,443
Total Impact	\$ 99,844,137	\$ 89,733,939	\$ 88,449,587	\$ 88,306,018	\$ 88,449,587	\$ 95,340,497	\$ 88,449,587	\$ 88,306,018	\$ 88,449,587	\$ 88,306,018	\$ 903,634,975

The discounted estimated total overall net cost avoidance over a 10-year period is \$772,189,519 at a 3-percent discount

rate and \$637,329,436 at a 7-percent discount rate. The following is a summary of the estimated costs

calculated for a 10-year time horizon at a 3- and 7-percent discount rate:

Summary	Total Cost Avoidance
Present Value (3 percent)	\$ 772,189,519
Annualized Cost Avoidance (3 percent)	\$ 90,524,168
Present Value (7 percent)	\$ 637,329,436
Annualized Cost Avoidance (7 percent)	\$ 90,741,374

IV. Administrative Procedure Act

This rulemaking is exempt from the advance notice-and-comment and delayed-effective-date requirements of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(a)(2), because this rulemaking relates to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rulemaking relates to both GSA's agency management and public property because it applies to Federally owned facilities and the disposition of personal property under

the jurisdiction, custody and control of GSA.

V. Executive Orders 12866, 13563, and 14192

E.O. 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action and, therefore, it was reviewed under section 6(b) of E.O. 12866. This action is considered an E.O. 14192 deregulatory action. We estimate that this rule generates \$84.44 million in annualized cost savings at a 7 percent discount rate, discounted relative to year 2024, over a perpetual time horizon.

VI. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), is also known as the Congressional Review Act or CRA. The CRA generally provides that before a rule may take effect, unless excepted, 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. This action is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801 as it relates to agency management or personnel under 5 U.S.C. 804(3)(B) and is therefore not a “rule” for purposes of the CRA. OIRA has further determined that this action does not meet the definition of a major rule under 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the APA pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel or to public property, loans, grants, benefits, or contracts. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

IX. Severability

This rule contains significant deletions across 41 CFR parts 102–3, 102–5, 102–33, 102–34, 102–35, 102–36, 102–37, 102–38, 102–39, 102–40, 102–41, 102–42, 102–71, 102–72, 102–73, 102–74, 102–75, 102–76, 102–77, 102–78, 102–79, 102–80, 102–81, 102–82, 102–83, 102–85, 102–117, 102–118, and 102–192. Deleted passages address a variety of distinct and unrelated topics, subtopics and individual circumstances and GSA considers each deletion to be separate and severable from one another. In the event of a stay or invalidation of any particular deletion, the remaining deletions would not be impacted and therefore would continue to function effectively. Restored provisions would not render remaining deletions unworkable. It is GSA’s

intention that the remaining deletions remain in effect.

GSA is adding a new section on severability at 41 CFR 102–3.190, which states that all provisions included in part 102–3 are separate and severable from one another.

Regulations concerning Federal Advisory Committee Management do a number of things—from outlining public notification requirements to explaining the role of an agency head. Overall, each constituent element in part 102–3 operates independently to help ensure that standards and uniform procedures govern the establishment, operation, administration, and duration of advisory committees. See sec. 2(b)(4) of the Federal Advisory Committee Act, as amended (codified at 5 U.S.C. 1002(b)(4)).

Accordingly, if any particular provision in part 102–3 were to be stayed or invalidated by a reviewing court, the remaining provisions would continue to function effectively for advisory committees. For example, if 41 CFR 102–3.75 on charter requirements were invalidated, that would not make 41 CFR 102–3.155, which lists the requirements for facilitating an advisory committee meeting that is closed to the public, unworkable. Likewise, if 41 CFR 102–3.60(b)(3) on attaining fairly balanced membership were invalidated, that would not prevent an agency from relying on the definitions in 41 CFR 102–3.25 to understand what “committee staff” means.

Further, any cross-references that appear throughout part 102–3 are duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from part 102–3 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in part 102–3 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA’s intention that the remaining provisions shall continue in effect.

GSA is also adding a new provision on severability at 41 CFR 102–71.120, which states that all provisions included in part 102–71 are separate and severable from one another.

If any particular term or provision in part 102–71, or the application thereof to any agency or circumstance, is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms or provisions, or the application of such

term or provision to agencies or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this rule will be valid and be enforced to the fullest extent permitted by law.

Further, any cross-references that appear throughout part 102–71 are duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from part 102–71 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in part 102–71 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA’s intention that the remaining provisions will continue in effect.

X. Signing Authority

The Acting Administrator of GSA, Michael Rigas, having reviewed and approved this document, is delegating the authority to electronically sign this document to Larry Allen, who is the Associate Administrator of the Office of Government-wide Policy, for purposes of publication in the **Federal Register**.

List of Subjects

41 CFR Part 102–3

Advisory committees, Government property management.

41 CFR Part 102–5

Government property management, Transportation.

41 CFR Part 102–33

Accounting, Aircraft, Aviation safety, Government property management.

41 CFR Part 102–34

Energy conservation, Government property management, Motor vehicles, Reporting and recordkeeping requirements.

41 CFR Part 102–35

Government employees.

41 CFR Part 102–36

Government property management, Surplus Government property.

41 CFR Part 102–37

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

41 CFR Parts 102–38 and 102–39

Government property management, Surplus Government property.

41 CFR Parts 102–40 and 102–41

Government property management.

41 CFR Part 102–42

Conflict of interests, Decorations, Foreign relations, Government property, Government property management.

41 CFR Part 102–71

Administrative practice and procedure, Federal buildings and facilities, Government property, Government property management, Rates and fares.

41 CFR Part 102–72

Administrative practice and procedure, Federal buildings and facilities, Government property management, Organization and functions (Government agencies), Rates and fares.

41 CFR Part 102–73

Administrative practice and procedure, Federal buildings and facilities, Real property acquisition.

41 CFR Part 102–74

Blind, Concessions, Energy conservation, Federal buildings and facilities, Fire prevention, Government property management, Parking, Rates and fares.

41 CFR Part 102–75

Federal buildings and facilities, Government property management, Rates and fares, Surplus Government property.

41 CFR Part 102–76

Energy conservation, Federal buildings and facilities, Government property management, Individuals with disabilities, Real property acquisition, Security measures.

41 CFR Part 102–77

Federal buildings and facilities, Government property management, Rates and fares.

41 CFR Part 102–78

Federal buildings and facilities, Government property management, Historic preservation, Rates and fares.

41 CFR Part 102–79

Federal buildings and facilities, Government property management, Rates and fares.

41 CFR Part 102–80

Federal buildings and facilities, Fire prevention, Government property

management, Occupational safety and health, Rates and fares.

41 CFR Part 102–81

Federal buildings and facilities, Government property management, Rates and fares, Security measures.

41 CFR Part 102–82

Federal buildings and facilities, Government property management, Rates and fares, Utilities.

41 CFR Parts 102–83 and 102–85

Federal buildings and facilities, Government property management, Rates and fares.

41 CFR Part 102–117

Freight, Government property management, Moving of household goods, Reporting and recordkeeping requirements, Transportation.

41 CFR Part 102–118

Accounting, Claims, Government property management, Reporting and recordkeeping requirements, Transportation.

41 CFR Part 102–192

Government property management, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Security measures.

41 CFR Part 102–193

Archives and records, Computer technology, Government property management.

Larry Allen,

Associate Administrator, Office of Government-wide Policy.

For the reasons stated in the preamble, GSA amends 41 CFR chapter 102 as follows:

- 1. Revise part 102–3 to read as follows:

PART 102–3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—Federal Advisory Committee Management Policies

Sec.

102–3.5 Coverage and application of this part.

102–3.10 Purpose and scope of the Federal Advisory Committee Act.

102–3.15–102–3.20 [Reserved]

102–3.25 Definitions.

102–3.30 [Reserved]

102–3.35 Policies governing the use of subcommittees.

102–3.40 Activities, committees, or groups not covered by the Act and this part.

Subpart B—Establishment, Renewal, Reestablishment, Merger, and Termination of Advisory Committees

102–3.45 Requirements for establishing and terminating advisory committees.

102–3.50 Authorities for establishing advisory committees.

102–3.55 Duration of advisory committees.

102–3.60 Procedures for establishing, renewing, reestablishing, or merging discretionary advisory committees.

102–3.65 Public notification requirements for discretionary advisory committees.

102–3.70 Filing requirements for advisory committee charters.

102–3.75 Content of advisory committee charters.

102–3.80 Amendments to advisory committee charters.

102–3.85 [Reserved]

Subpart C—Management of Advisory Committees

102–3.90 Responsibilities and functions under this subpart.

102–3.95 Principles for managing advisory committees.

102–3.100 Responsibilities and functions of GSA.

102–3.105 Responsibilities of an agency head.

102–3.110 Responsibilities of a chairperson of an independent Presidential advisory committee.

102–3.115 Responsibilities and functions of a CMO.

102–3.120 Responsibilities and functions of a DFO.

102–3.125 Agency administrative guidelines to implement an advisory committee.

102–3.130 Policies for appointment, and compensation or reimbursement of advisory committee members.

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

102–3.135 Coverage and application of this subpart.

102–3.140 Policies for advisory committee meetings.

102–3.145 Policies for subcommittee meetings.

102–3.150 Announcement of advisory committee meetings to the public.

102–3.155 Procedures for closing advisory committee meetings to the public.

102–3.160 Activities of advisory committees not subject to notice and open meeting requirements.

102–3.165 Documentation of advisory committee meetings.

102–3.170 Access to advisory committee records.

102–3.175 Reporting and recordkeeping requirements for advisory committees.

Subpart E—Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration

102–3.180 Coverage and application of this subpart.

102–3.185 Requirements for agencies using advice from NAS or NAPA.

Subpart F—Severability

102–3.190 Severability of provisions.

Authority: 40 U.S.C. 121; 5 U.S.C. chapter 10; and E.O. 12024, 42 FR 61445, 3 CFR, 1977 Comp., p. 158.

Subpart A—Federal Advisory Committee Management Policies**§ 102–3.5 Coverage and application of this part.**

This part provides the policy framework and establishes minimum requirements that must be used by agency heads and Federal officers in applying the Federal Advisory Committee Act, as amended (FACA or “the Act”), 5 U.S.C. chapter 10, to advisory committees they establish and operate. This part is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, including any advisory committee or officer, member, employee, agent, or contractor of any advisory committee.

§ 102–3.10 Purpose and scope of the Federal Advisory Committee Act.

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

§§ 102–3.15—102–3.20 [Reserved]**§ 102–3.25 Definitions.**

The following definitions apply to this part:

Act means the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. chapter 10.

Administrator means the Administrator of General Services.

Advisory committee means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining the group’s advice or recommendations for the President or on issues or policies within the scope of agency responsibilities (codified at 5 U.S.C. 1001). Advisory

committees are subject to the Act unless specifically exempted by the Act, or by other statutes, or not covered by this part.

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

Agency head means the head of an executive branch agency, department, or commission, or their designated delegate.

Chairperson means the advisory committee or subcommittee member who serves in this role on an advisory committee or subcommittee by statutory requirement, or by appointment or invitation by Presidential authority or an agency’s authority.

Committee Management Officer (CMO) means the individual designated by the agency head to implement the provisions of sec. 8(b) of the Act (codified at 5 U.S.C. 1007(b)) and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (Secretariat) means the organization established pursuant to sec. 7(a) of the Act (codified at 5 U.S.C. 1006(a)), which is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator under the Act and E.O. 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or electronically, such as using telecommunications or through a virtual platform), held with the approval of an agency, and with a Designated Federal Officer in attendance, for the purpose of deliberating on the matters upon which the advisory committee provides advice or recommendations.

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

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

Designated Federal Officer (DFO) means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of secs. 10(e) and (f) of the Act (codified at 5 U.S.C. 1009(e) and (f)) and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute,

and its establishment or termination is within the legal discretion of an agency head.

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

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive, and its establishment or termination is beyond the legal discretion of an agency head.

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

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

Utilized by means a committee over which the President or a Federal officer or agency exercises actual management or control of its operation, whether or not it was established by the Federal Government.

§ 102–3.30 [Reserved]**§ 102–3.35 Policies governing the use of subcommittees.**

In general, the requirements of the Act and the policies of this part do not apply to subcommittees of advisory committees as long as the subcommittee reports only to that parent advisory committee and not directly to a Federal officer or agency. However, before establishing a subcommittee under a discretionary committee that is not made up entirely of members of a parent advisory committee, the head of the agency shall follow the same consultation process and document in writing the same determination of need for the subcommittee as is required under § 102–3.60(a) for the creation of a discretionary advisory committee.

§ 102–3.40 Activities, committees, or groups not covered by the Act and this part.

In addition to the committees created by the National Academy of Sciences, Engineering, and Medicine and the National Academy of Public Administration (except as covered by subpart E of this part), the Central Intelligence Agency, and the Federal Reserve, the following are examples of committees or groups that are not covered by the Act or this part:

(a) Any advisory committee established or utilized by the Office of the Director of National Intelligence, if the Director of National Intelligence

determines that for reasons of national security such advisory committee cannot comply with the requirements of the Act;

(b) Committees specifically exempted by statute;

(c) Committees created by non-Federal entities and not actually managed or controlled by the executive branch;

(d) Groups assembled where attendees provide individual advice to a Federal official(s);

(e) Groups assembled to exchange facts or information with a Federal official(s);

(f) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and Tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities, and exclusively discussing matters relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration (sec. 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), and Office of Management and Budget (OMB) Memorandum M-95-20, dated September 21, 1995);

(g) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(h) Local civic groups whose primary function is that of rendering a public service with respect to a Federal program;

(i) Groups established to advise State or local officials;

(j) Any committee established to perform primarily operational as opposed to primarily advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature;

(k) Meetings where individual rather than consensus advice is sought, such as roundtable discussions, workshops, townhall meetings, listening sessions, fact-finding meetings, meetings with an individual, or meetings with small groups of experts that do not involve regular meetings and collective recommendations;

(l) Public engagement that is required by statutes, including but not limited to: notice and comment rulemaking under the Administrative Procedure Act (5

U.S.C. 551-559), public meetings required under the National Environmental Policy Act (42 U.S.C. 4321), or public participation under the Resource Conservation and Recovery Act (42 U.S.C. 6974(b)), the Clean Water Act (33 U.S.C. 1251(e)), or the Safe Drinking Water Act (42 U.S.C. 300j-9) and the National Historic Preservation Act section 106 (54 U.S.C. 306108);

(m) Meetings with pre-existing non-governmental groups such as trade associations, advocacy groups, veterans organizations, environmental groups, or religious organizations where each group already has formulated views that it seeks to share with the Government; and

(n) Meetings where an agency is either providing its views to the private sector, or is assisting the private sector in developing guidance for itself.

Subpart B—Establishment, Renewal, Reestablishment, Merger, and Termination of Advisory Committees

§ 102-3.45 Requirements for establishing and terminating advisory committees.

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, merger, and termination of advisory committees.

§ 102-3.50 Authorities for establishing advisory committees.

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

(a) *Required by statute.* By law where Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (non-discretionary);

(b) *Presidential authority.* By Presidential directive (non-discretionary);

(c) *Authorized by statute.* By law where Congress authorizes, but does not direct the President or an agency to establish it (discretionary); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other agency-authorizing statutes (discretionary).

§ 102-3.55 Duration of advisory committees.

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration or

termination, either stated in or implied by operation of the statute;

(2) The President or agency head as applicable determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

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

(4) The President or agency head as applicable renews the advisory committee not later than two years after its date of establishment, renewal, or reestablishment in accordance with § 102-3.60. If the President or an agency needs an advisory committee that was terminated, it can be reestablished in accordance with § 102-3.60.

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

§ 102-3.60 Procedures for establishing, renewing, reestablishing, or merging discretionary advisory committees.

(a) *Consultation with the Secretariat.* To establish, renew, reestablish, or merge a discretionary advisory committee, the agency head must first consult with the Secretariat and, as part of the consultation, provide a written public interest determination approved by the head of the agency to the Secretariat documenting that the establishment, renewal, reestablishment, or merger of the committee is essential to the conduct of agency business and that the information to be obtained is not already available through another advisory committee or source within the Federal Government. At a minimum, the following factors should be addressed in the written public interest determination provided to the Secretariat (with a copy to OMB) to demonstrate that establishing the committee is in the public interest:

(1) Annual budget and expected costs broken into:

(i) Federal personnel (based on full-time equivalent (FTE) usage basis) and other Federal internal costs;

(ii) Proposed payments to members and number of members; and

(iii) Reimbursable costs;

(2) If applicable, the total dollar value of grants expected to be recommended during the fiscal year;

(3) Criteria for selecting members to ensure the committee has the necessary expertise and fairly balanced membership;

(4) List of all other Federal advisory committees of the agency;

(5) Justification that the information or advice provided by the Federal advisory committee is not available from another Federal advisory committee, another Federal Government source or any other more cost-effective and less burdensome source; and

(6) If the justification relates to a renewal, a summary of the previous accomplishments of the committee and the reasons it needs to continue.

(b) *Agency considerations for fairly balanced membership.* To comply with the Act's requirement for fairly balanced membership, during the Federal advisory committee member recruitment process agencies should consider the following:

(1) *The points of view required.* During the formation of the advisory committee membership and as membership vacancies occur, agencies should ensure that they fully consider and understand the potential implications or anticipated impacts of the advisory committee's potential recommendations. This includes consideration of the groups and entities potentially affected or interested in such recommendations, as appropriate based on the nature and functions of the advisory committee, so that the agency can make informed decisions on the areas of expertise or perspectives that would advance the work of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed by the committee.

(2) *Outreach.* Having identified the points of view that would promote a fairly balanced advisory committee membership, agencies should conduct broad outreach.

§ 102–3.65 Public notification requirements for discretionary advisory committees.

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, reestablished, or merged.

(a) *Procedure.* Upon receipt of the written public interest determination approved by the head of the agency and information required in accordance with § 102–3.60(a), the Secretariat may provide an assessment to the agency (with a copy to OMB) as to its views on whether establishment of the advisory committee is in the public interest. Following receipt of this assessment or notification from the Secretariat that no such assessment will be produced, the agency must publish a notice in the

Federal Register announcing that the advisory committee is being established, renewed, reestablished, or merged. The notice must include the written public interest determination approved by the head of the agency described in § 102–3.60(a) and any assessment provided by the Secretariat.

(b) *Time required for notices.* The required notices for establishment, renewal, reestablishment, or merger must appear at least 7 calendar days before the charter is filed, except that the Secretariat may approve less than 7 calendar days when requested by the agency in exceptional circumstances.

§ 102–3.70 Filing requirements for advisory committee charters.

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head.

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

(1) The agency head;

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

(3) The Library of Congress;

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

(5) OMB.

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

§ 102–3.75 Content of advisory committee charters.

An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. The charter must contain the following information:

(a) The advisory committee's official designation (official name);

(b) The legal authority that permits the advisory committee to be established;

(c) The objectives and the scope of the advisory committee's activities;

(d) A description of the duties for which the advisory committee is

responsible and specification of the authority for any non-advisory functions;

(e) The agency or Federal officer to whom the advisory committee submits its recommendations;

(f) The agency responsible for providing the necessary support to the advisory committee, including the name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of sec. 6(b) of the Act (codified at 5 U.S.C. 1005(b)), if appropriate;

(g) The estimated annual costs to operate the advisory committee in dollars and person years (FTE). The estimated costs should break down all costs into the three categories described in § 102–3.60(a);

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

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

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

(k) The estimated number of advisory committee members, the expertise or experience required, and the anticipated advisory committee member designations;

(l) Whether subcommittees may be created and by whom; and

(m) The date the charter is filed in accordance with § 102–3.70.

§ 102–3.80 Amendments to advisory committee charters.

The agency head is responsible for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102–3.60. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee:

(a) *Non-discretionary advisory committees.* When Congress by law, or the President by Presidential directive (e.g., E.O.), changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Presidential directive (e.g., E.O.), and file the amended charter as specified in § 102–3.70.

(b) *Discretionary advisory committees.* The agency head must amend the charter of a discretionary advisory committee when an agency head

determines that provisions of a filed charter are inaccurate or obsolete, specific provisions have changed, such as the name of the advisory committee, number of members, estimated number or frequency of meetings, objectives, or estimated costs, or when advisory committees need to be merged. The agency must then file the amended charter as specified in § 102–3.70.

(c) *Public notification of charter amendments.* Agencies must post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the agency must publish a notice of amendment in the **Federal Register**. **Federal Register** notice publishing and website posting of charter amendments may be performed concurrently with the filing of the charter. The publishing requirement in the **Federal Register** does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

§ 102–3.85 [Reserved]

Subpart C—Management of Advisory Committees

§ 102–3.90 Responsibilities and functions under this subpart.

This subpart outlines specific responsibilities and functions to be carried out by the U.S. General Services Administration (GSA), the agency head, the CMO, and the DFO under the Act.

§ 102–3.95 Principles for managing advisory committees.

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

(a) *Provide adequate support and access.* Before establishing an advisory committee, agencies should identify requirements and ensure that adequate resources are available to support anticipated activities, such as work and meeting space, necessary technology, supplies and equipment (*e.g.*, adequate virtual meeting capabilities), Federal staff support, access to key decisionmakers, and member access to meetings.

(b) *Practice openness.* Agencies should seek to be as transparent and timely as possible when providing public access to advisory committee activities and materials. Agencies should create public-facing websites at both the agency and advisory committee level to help the public understand an agency's advisory committee program, and use additional notification methods, as appropriate, to reach advisory committee stakeholders, pursuant to

sec. 10 of the Act (codified at 5 U.S.C. 1009).

(c) *Fiscal restraint.* Agencies should actively seek to minimize costs associated with advisory committees and should be transparent about all expenditures. Each agency shall keep records fully disclosing the amount budgeted to each committee, a detailed account of all committee expenditures and agency expenditures on behalf of the committee, and the nature and extent of their activities. This information should be provided as part of the annual comprehensive review and be reported by the Secretariat. If the committee has a website, the agency should provide accurate and up to date information regarding all committee expenditures and the justification for each expenditure on an annual basis.

§ 102–3.100 Responsibilities and functions of GSA.

(a) The responsibilities of the Administrator under sec. 7 of the Act (codified at 5 U.S.C. 1006) have been delegated by the Administrator to the Secretariat.

(b) The Secretariat is responsible for:

(1) Engaging in consultations with agencies on the establishment, reestablishment, renewal, merger, and termination of discretionary advisory committees;

(2) Prescribing guidance and regulations applicable to advisory committees;

(3) Assisting other agencies in implementing and interpreting the Act;

(4) Conducting a Government-wide annual comprehensive review of advisory committees to determine whether each committee is carrying out its purpose, whether the responsibilities assigned to the committee should be revised, and whether any committees should be merged or terminated;

(5) Collecting and analyzing data relating to the costs of individual advisory committees and agency FACA programs as well as the costs of the Government-wide program and the Secretariat;

(6) Designing and maintaining a FACA database to facilitate data collection, reporting, and use of information required by the Act; and

(7) Providing recommendations for transmittal by the Administrator to the President, Congress, or agency heads regarding actions that should be taken with regard to the FACA and its implementation.

§ 102–3.105 Responsibilities of an agency head.

When a committee is utilized by or established by an agency, the agency head must:

(a) Issue administrative guidelines and management controls consistent with guidance issued by the Administrator;

(b) Maintain information on the nature, functions, and operation of each advisory committee within its jurisdiction;

(c) Designate a CMO for the agency and a DFO for each advisory committee and its subcommittees;

(d) Approve the advisory committee charters for establishments, renewals, re-establishments, or mergers;

(e) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(f) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee. This review must address all of the criteria listed in § 102–3.60;

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

(h) Assure that the interests and affiliations of committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (5 CFR chapter XVI, subchapter B) including any supplemental agency requirements, and other Federal ethics rules; and

(i) Appoint or invite individuals to serve on committees, unless otherwise provided for by a specific statute or Presidential directive.

§ 102–3.110 Responsibilities of a chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee must:

(a) Consult with the Secretariat concerning the designation of a CMO and DFO; and

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

§ 102–3.115 Responsibilities and functions of a CMO.

In addition to implementing the provisions of sec. 8(b) of the Act (codified at 5 U.S.C. 1007(b)), the CMO will carry out all responsibilities delegated by the agency head and

manage the agency FACA program. The CMO also should ensure that secs. 10(b), 12(a), and 13 of the Act (codified at 5 U.S.C. 1009(b), 1011(a), and 1012, respectively) are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to—

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

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

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

(d) *Closed meeting determinations.* Agency, or in the case of an independent Presidential advisory committee, Secretariat, determinations to close or partially close advisory committee meetings required by § 102–3.105(e).

§ 102–3.120 Responsibilities and functions of a DFO.

(a) The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee to be the DFO for each advisory committee and its subcommittees, who must:

(1) Ensure that their committee activities comply with the Act, this part, their agency administrative procedures, and any other applicable laws and regulations;

(2) Approve or call all meetings of the advisory committee or subcommittee;

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

(4) Attend all advisory committee and subcommittee meetings for their duration;

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

(6) Chair any meeting when so directed by the agency head;

(7) Maintain information on advisory committee activities and provide such information to the public, as applicable; and

(8) Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (e.g., FACA overview, ethics training) for compliance with the Act and this part.

(b) The DFO should ensure a public-facing website is created and maintained for each advisory committee, and include information such as: the advisory committee charter; relevant laws, regulations, and guidance; advisory committee member rosters; **Federal Register** notices; meeting information (such as agendas, meeting materials, and minutes); reports and recommendations; and any other information that would increase the transparency and public understanding of advisory committee functions and activities and assist in fulfilling the requirements under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

§ 102–3.125 Agency administrative guidelines to implement an advisory committee.

An agency's administrative guidelines provide the details that advisory committee staff need to implement FACA requirements during the creation, operation, and termination of their advisory committees.

(a) *Advisory committee operating procedures (also known as bylaws).* Agency administrative guidelines should specify the content of advisory committee operating procedures to ensure they provide clear instructions on how to comply with the Act and the authority for the committee, including how to conduct advisory committee meetings and other committee activities.

(b) *Advisory committee costs.* Agency administrative guidelines must:

(1) Provide instructions on how to identify, calculate, and fully document advisory committee costs; and

(2) Ensure agency committee cost records match the data reported through the FACA database.

§ 102–3.130 Policies for appointment, and compensation or reimbursement of advisory committee members.

In developing guidelines to implement the Act, this part, and other applicable laws and regulations at the agency level, agency heads should address the following issues:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority. Agency heads are encouraged to set member term limits, where possible, so that agencies continually ensure the committee is fairly balanced throughout the life of the advisory committee.

(b) *Compensation of advisory committee members.* Agencies are not required to pay their advisory committee members, unless required to do so by statute or Presidential authority. In determining the rate of compensation an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved. The agency head may establish appropriate rates of pay not to exceed the rate for level III of the Executive Schedule under 5 U.S.C. 5314, unless a higher rate expressly is allowed by another statute. The agency may not provide additional compensation in any form. Federal employees may not receive any additional compensation or bonus pay for their service on an advisory committee, except recompense of travel expenses in accordance with the Federal Travel Regulation in 41 CFR subtitle F.

(c) *Federal employees assigned to an advisory committee.* Federal employees serving as either an advisory committee member or as a staff person remain covered during the assignment by the compensation system of their employing agency.

(d) *Other appointment considerations.* Any advisory committee staff person who is not a current Federal employee must be appointed in accordance with applicable agency procedures.

(e) *Travel expenses.* Advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem, per the rates established for employees by the Administrator at 5 U.S.C. 5702. In order to minimize travel expenses, agencies should hold virtual meetings or allow virtual attendance for committee members who would otherwise need to travel. Reimbursement of travel expenses should only be done when the Presidential directive, authorizing statute, or committee charter allows for it, funds are available, and expenditure of funds will not exceed budgeted amounts.

(f) *Services for advisory committee members with disabilities.* While performing advisory committee duties, an advisory committee member with disabilities may be provided the same services by a personal assistant as those that may be provided to employees per 5 U.S.C. 3102.

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 Coverage and application of this subpart.

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

§ 102–3.140 Policies for advisory committee meetings.

(a) Each advisory committee meeting must be held at a reasonable time and in a manner or place accessible to the public.

(b) The physical or electronic meeting room must be sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public.

(c) Any member of the public is permitted to file a written statement with the advisory committee, whether or not the statement is related to a specific meeting.

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

(e) Any advisory committee meeting conducted in whole or in part through any electronic medium (such as a teleconference or through a virtual platform) must meet the requirements of this subpart. Agencies should explore having virtual meetings instead of in-person meetings as a cost savings measure.

(f) The **Federal Register** notices, agendas, and supporting materials related to each meeting should be posted on the agency advisory committee website (if one exists) as soon as they are available or at the time they are provided to the advisory committee members.

§ 102–3.145 Policies for subcommittee meetings.

If a subcommittee provides advice or recommendations directly to a Federal officer or agency, or if its advice or recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with the requirements of this subpart.

§ 102–3.150 Announcement of advisory committee meetings to the public.

(a) A notice in the **Federal Register** must be published at least 7 calendar days prior to an advisory committee meeting, which includes:

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

(2) The time, date, physical place (and/or instructions to connect electronically), and purpose of the meeting;

(3) Whether meeting registration is required;

(4) A summary of the agenda, and/or topics to be discussed and instructions on how to access meeting materials;

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

(6) Instructions for submitting written comments, and oral comments if permitted;

(7) Instructions on how to submit a request for physical meeting or electronic meeting accommodations consistent with the relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794; and

(8) The contact information for the DFO or other responsible agency official, or agency electronic mailbox for the committee, to contact for additional information concerning the meeting.

(b) The agency or an independent Presidential advisory committee may give less than 7 calendar days notice if the President determines this is necessary for reasons of national security, or if the head of an agency determines this is necessary due to exceptional circumstances, and the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

(c) In addition to the **Federal Register**, and consistent with standard agency practice, agencies should announce meetings through additional notification methods, such as websites and social media, considering the most appropriate methods to reach committee stakeholders, and with as much advance notice as possible.

§ 102–3.155 Procedures for closing advisory committee meetings to the public.

(a) To close all or part of an advisory committee meeting, the DFO must submit a request to the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the

Sunshine Act, 5 U.S.C. 552b(c), that justifies the closure. The request must provide the agency head or the Secretariat sufficient time to review the matter in order to make a determination before publication of the meeting notice required by § 102–3.150.

(b) If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions of the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting will be closed. The agency head or the chairperson of an independent Presidential advisory committee must make a copy of any such determination available to the public upon request.

§ 102–3.160 Activities of advisory committees not subject to notice and open meeting requirements.

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

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for deliberation by advisory committee members in a public meeting of the advisory committee, or deliberation by subcommittee members in a public meeting of the subcommittee (where applicable). These meetings to conduct preparatory work do not include deliberation among advisory committee or subcommittee members; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or subcommittee (such as meeting logistics) or to receive administrative information from a Federal officer or agency (such as a briefing on ethics or FACA procedural requirements).

§ 102–3.165 Documentation of advisory committee meetings.

(a) Detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, must be kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

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

(2) A list of the persons who were present at the meeting, including

advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

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

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

(c) The DFO must ensure that minutes are certified for accuracy by the chairperson within 90 calendar days of the meeting to which they relate. Agencies should post the meeting minutes on the agency advisory committee website (if one exists).

§ 102–3.170 Access to advisory committee records.

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act (codified at 5 U.S.C. 1009(b)) provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although certain advisory committee records may be withheld under an exemption to the Freedom of Information Act (FOIA), agencies may not require members of the public or other interested parties to use FOIA procedures in order to obtain records available under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

§ 102–3.175 Reporting and recordkeeping requirements for advisory committees.

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by sec. 6(b) of the Act (codified at 5 U.S.C. 1005(b)) must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. These reports are prepared and transmitted to the Congress either by the President or the President's delegate pursuant to § 102–3.75(f).

(b) *Annual comprehensive review of Federal advisory committees.* Per sec. 7(b) of the Act (codified at 5 U.S.C. 1006(b)), GSA is required to conduct an annual comprehensive review of the activities and responsibilities of each Federal advisory committee that was in existence during any part of a Federal fiscal year. In carrying out the review the Secretariat shall review the written

public interest determination required by § 102–3.60(a), any reports or recommendations issued by each committee, including all grants, and data reported on each committee by its sponsoring agency to make a recommendation as to whether the committee should be renewed, merged, or terminated. Federal agencies are responsible for reporting data on each advisory committee into the GSA FACA database as part of the annual comprehensive review.

(c) *Annual report of closed or partially closed meetings.* In accordance with sec. 10(d) of the Act (codified at 5 U.S.C. 1009(d)), advisory committees holding closed or partially closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, copies of each report made by an advisory committee, including any report of closed or partially closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by sec. 13 of the Act (codified at 5 U.S.C. 1012) for public inspection and use.

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

Subpart E—Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration

§ 102–3.180 Coverage and application of this subpart.

This subpart provides guidance to agencies on compliance with sec. 15 of the Act (codified at 5 U.S.C. 1014). Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National

Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart, NAS also includes the National Academy of Engineering, the National Academy of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than sec. 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 Requirements for agencies using Advice from NAS or NAPA.

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

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

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of sec. 15(b) of the Act (codified at 5 U.S.C. 1014(b)); or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sec. 15(b)(1), (2), and (5) of the Act (codified at 5 U.S.C. 1014(b)(1), (2), and (5), respectively).

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of sec. 15 of the Act (codified at 5 U.S.C. 1014) that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to both actual management and control by that academy and not by the agency.

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

(1) The academy has adopted policies and procedures that comply with the applicable requirements of sec. 15 of the Act (codified at 5 U.S.C. 1014); and

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

Subpart F—Severability

§ 102–3.190 Severability of provisions.

All provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions shall continue in effect. 9*

PART 102–5—[Removed and Reserved]

■ 2. Under the authority of 40 U.S.C. 121(c); 31 U.S.C. 1344(e)(1), remove and reserve part 102–5.

■ 3. Revise part 102–33 to read as follows:

PART 102–33—MANAGEMENT OF GOVERNMENT AIRCRAFT

Subpart A—General Provisions

Sec.

- 102–33.5 Scope.
- 102–33.10 Deviations.
- 102–33.15 Definitions.
- 102–33.20 Agency responsibilities.
- 102–33.25 SAMO duties.
- 102–33.30 GSA's responsibilities for Federal aviation management.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

- 102–33.35 Process for acquiring aircraft and aircraft parts.
- 102–33.40 Acquiring Government aircraft.
- 102–33.45 Process for budgeting to acquire CAS.
- 102–33.50 Responsibilities when contracting to purchase or capital lease a Federal aircraft or to award a CAS contract.
- 102–33.55 Minimum requirements for CAS contracts.
- 102–33.60 Responsibilities when acquiring aircraft parts.
- 102–33.65 Military FSCAP requirements.
- 102–33.70 Life-limited parts requirements.

Subpart C—Government Aircraft and Aircraft Parts

- 102–33.75 Federal aircraft management responsibilities.
- 102–33.80 Management responsibilities when hiring CAS.
- 102–33.85 Management accountability and controls for aviation programs.
- 102–33.90 Flight Program Standards.
- 102–33.95 Establishing Flight Program Standards.
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- 102–33.105 Establishing Flight Program Standards.
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- 102–33.185 Disposing or replacing aircraft and aircraft parts.
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Subpart E—Reporting Information on Government Aircraft

- 102–33.225 Government aircraft report requirement.
- 102–33.230 Exemptions from reporting information to GSA on Government aircraft.
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- 102–33.250 Federal inventory.
- 102–33.255 Declassify a Federal aircraft.
- 102–33.260 Federal aircraft cost and utilization data.
- 102–33.265 CAS cost and utilization data.
- 102–33.270 Aircraft accident and incident.
- 102–33.275 Development of performance indicators.

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

Subpart A—General Provisions

§ 102–33.5 Scope.

(a) This part applies to all federally funded aviation activities using Government aircraft for official executive branch business.

(b) This part does not apply to the following:

- (1) The Armed Forces, except for:
 - (i) Section 102–33.20(e); and
 - (ii) Subpart D of this part;
- (2) The President or Vice President and their offices;

(3) Aircraft when an executive agency provides Government-furnished avionics for commercially or privately owned aircraft for the purposes of technology demonstration or testing; and

(4) Privately owned aircraft that agency personnel use for official travel.

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

§ 102–33.10 Deviations.

(a) See §§ 102–2.60 through 102–2.110 of this chapter.

(b) The General Services Administration (GSA) may not grant deviations from the requirements of OMB Circular A–126.

§ 102–33.15 Definitions.

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

Aircraft part means a component or assembly used on aircraft.

Armed Forces mean all military branches (active, reserve, and National Guard).

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

Crewmember means a person operating or assisting in flight.

Criticality code means a single digit code that DoD assigns to military Flight Safety Critical Aircraft Parts (FSCAP).

Data plate means a fireproof, permanent identification (ID) plate on aircraft or components, per Federal Aviation Administration (FAA) or military standards.

Declassify means to remove non-operational aircraft from Federal inventory for ground use.

Disposal date is when an executive agency relinquishes aircraft responsibility. For FAIRS, declassification is considered a “disposal” action.

Donated aircraft are surplus aircraft donated to eligible non-Federal groups pursuant to § 102–37 of this subchapter.

Exchange see § 102–35.20 of this subchapter.

Exchange/sale see § 102–35.20 of this subchapter.

Exclusive use means aircraft operated solely for U.S. Government benefit.

Executive agency see § 102–35.20 of this subchapter.

Federal aircraft means manned or unmanned aircraft owned or used by an executive agency, including:

(1) Bailed aircraft: aircraft owned by one agency, operated by another under agreement;

(2) Borrowed aircraft: aircraft owned by a non-executive agency, used by an executive agency without compensation;

(3) Forfeited aircraft: aircraft seized by the Government through a legal process;

(4) Loaned aircraft: aircraft owned by an executive agency, in a non-executive agency’s custody without compensation; and

(5) Owned aircraft: aircraft title held by an executive agency.

Note 1 to the definition of “Federal aircraft”: Bailed or loaned aircraft stay in the owning agency’s inventory, unless DoD-owned, then listed under the operator.

Federal Aviation Interactive Reporting System (FAIRS) is a management information system designed to collect, maintain, analyze, and report information on Federal aircraft inventories and cost and utilization of Federal and Commercial Aviation Services (CAS).

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

Full-service contract is when an agency leases a non-Federal aircraft with crew and maintenance for exclusive use; such aircraft are not considered Federal, no matter the contract length.

Government aircraft means manned or unmanned aircraft operated for the exclusive use of an executive agency. Government aircraft include—

(1) Federal aircraft; and
(2) Aircraft hired as CAS, including:
(i) Leased aircraft for exclusive use for an agreed upon period of time;
(ii) Capital lease aircraft for which the leasing agency holds an option to take title;

(iii) Charter aircraft for hire under a contractual agreement for one-time exclusive use that specifies performance;

(iv) Rental aircraft obtained commercially under an agreement in which the executive agency has exclusive use for an agreed upon period of time;

(v) Contracting for full services; or
(vi) Obtaining related aviation services by commercial contract, except those services acquired to support Federal aircraft.

Governmental function is a federally funded activity carried out by an agency under its legal authority.

Intelligence community means those agencies identified in the National Security Act, 50 U.S.C. 401a(4).

Inter-service Support Agreement (ISSA) is a deal where one agency provides aviation services to another, with or without reimbursement; sharing only the aircraft is a bailment, not an ISSA.

Life-limited part is any aircraft part with a set replacement time, inspection interval, or time-based requirement. For non-military parts, the FAA specifies life-limited part airworthiness limitations in 14 CFR 21.50, 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, and 35.5, and on product Type Certificate Data Sheets (TCDS). Letters authorizing Technical Standards Orders (TSO) must note or reference mandatory replacement or inspection of parts.

Military aircraft part is an aircraft part used on an aircraft that was developed by the Armed Forces (whether or not it carries an FAA airworthiness certificate).

Non-operational aircraft are Federal aircraft deemed unsafe for flight and not economically repairable, excluding those temporarily out of service for maintenance, which are considered operational aircraft.

Official Government business in relation to Government aircraft—

(1) Includes, but is not limited to—
(i) Carrying crewmembers, qualified non-crewmembers, and cargo directly required or associated with performing governmental functions;
(ii) Carrying passengers authorized to travel on Government aircraft; and
(iii) Training pilots and other aviation personnel.

(2) Does not include—

(i) Using Government aircraft for personal or political purposes, except

for required use travel and space available travel as defined in OMB Circular A–126; or

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

Operational aircraft are Federal aircraft that are safe to fly or can be economically repaired to be flight-ready, including those temporarily out of service for maintenance.

Original equipment manufacturer (OEM) refers to the company that designed or holds rights to produce an aircraft or part; Parts Manufacturer Approval (PMA) parts are not OEM, though they may be valid replacements.

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

Performance Indicator is a metric used to track progress toward goals; for aircraft, it measures the efficiency and effectiveness of delivering safe aviation services.

Production approval holder (PAH) means the person or company who holds a Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standards Orders Authorization (TSOA), issued under provisions of 14 CFR part 21 and who controls the design, manufacture, and quality of a specific aircraft part.

Qualified non-crewmember means an individual, other than a member of the crew, aboard an aircraft—

(1) Operated by a United States (U.S.) Government agency in the intelligence community; or

(2) Whose presence is required to perform or is associated with performing the governmental function for which the aircraft is being operated (qualified non-crewmembers are not passengers).

Registration mark means the unique identification mark or tail number, which is the FAA-assigned ID displayed on U.S.-registered Government aircraft, except military aircraft; foreign CAS aircraft display their national markings.

Related aviation services contract is a commercial agreement where an agency hires aviation services, excluding aircraft, such as crew, maintenance, or catering.

Required use travel is when an agency employee must use a Government aircraft due to security, communication needs, or scheduling, as approved pursuant to OMB Circular A–126.

Risk analysis and management means a systematic process for—

(1) Identifying risks and hazards associated with alternative courses of

action involved in an aviation operation;

(2) Choosing from among these alternatives the courses of action that will promote optimum aviation safety;

(3) Assessing the likelihood and predicted severity of an injurious mishap within the various courses of action;

(4) Controlling and mitigating identified risks and hazards within the chosen courses of action; and

(5) Periodically reviewing the chosen courses of action to identify possible emerging risks and hazards.

Safe for flight means an aircraft or part has been inspected and certified to meet required standards—FAA regulations for civil aircraft in 14 CFR chapter I or military/agency standards for others—ensuring it is airworthy and safe to operate.

Safety Management System (SMS) means a top-down approach to managing safety risk through structured procedures, policies, and practices, covering safety policy, risk management, assurance, and promotion.

Senior Aviation Management Official (SAMO) is an agency's lead representative to the Interagency Committee for Aviation Policy (ICAP); responsible for promoting flight safety and compliance with standards.

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

Suspected unapproved part means an aircraft part, component, or material that is suspected of not meeting the requirements of an "approved part." Approved parts are produced in compliance with 14 CFR part 21, are maintained in compliance with 14 CFR parts 43 and 91, and meet applicable design standards. A part, component, or material may be suspect because of its questionable finish, size, or color; improper (or lack of) identification; incomplete or altered paperwork; or any other questionable indication. For further information, see FAA Advisory Circular 21-29.

Traceable part is an aircraft part identifiable by documentation, markings, or packaging, showing it was made or deemed airworthy under 14 CFR parts 21 and 43.

Training means instruction to qualify and maintain flight program personnel. The instruction can apply to either public or civil missions.

Unmanned Aircraft Systems (UAS) means remotely or autonomously flown aircraft and required components. FAA certifies the full system; report only if it

meets an agency's capitalization threshold and the UAS lifecycle is two years or more.

Unsalvageable aircraft part means parts unsafe for flight due to condition, defects, missing records, or non-compliance.

U.S. Government Aircraft Cost Accounting Guide (CAG) means GSA-issued guide for tracking aircraft costs, based on OMB and FAIRS standards.

§ 102-33.20 Agency responsibilities.

(a) Acquire, manage, and dispose of Federal aircraft and acquire and manage CAS as safely, efficiently, and effectively as possible;

(b) Document and report:

(1) Types and numbers of your Federal aircraft;

(2) Costs of acquiring and operating Government aircraft;

(3) Amount of time of use of Government aircraft; and

(4) Accidents and incidents involving Government aircraft;

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

(d) Ensure all passengers on your agency's aircraft are authorized; and

(e) Appoint a SAMO by sending a letter to the Deputy Associate Administrator at the Office of Asset and Transportation Management, GSA, to represent the agency in the ICAP. This applies to all executive agencies using aircraft, including DoD, FAA, and the National Transportation Safety Board (NTSB), but not to those that only occasionally rent aircraft for specific flights.

§ 102-33.25 SAMO duties.

SAMOs must:

(a) Represent the agency's views to the ICAP and vote on behalf of the agency;

(b) Contribute technical and operational policy expertise to ICAP;

(c) Serve as the designated approving official for FAIRS when the agency elects to have one person serve as both SAMO and the designated official for FAIRS (DoD will not have a designated official for FAIRS); and

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

(e) The SAMO should have:

(1) Experience as a pilot or crew member; or

(2) Management experience within an aviation operations management/flight program.

(f) Designate an official (by letter to the Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-

wide Policy, GSA) to certify the accuracy and completeness of information reported through FAIRS (Armed Forces and the U.S. Coast Guard, are not required to report information to FAIRS);

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

(h) Ensure that your agency's internal policies and procedures are consistent with the requirements of OMB Circulars A-126, A-76, and A-11, Federal Aviation Administration Advisory Circular 120-92, and this part; and

(i) Ensure that safety and other critical aviation program requirements are satisfied. Executive agencies that only hire aircraft occasionally for specific flights, must either:

(1) Establish an aviation program that complies with the requirements of OMB Circular A-126; or

(2) Hire those aircraft through an agency with a policy-compliant aviation program.

§ 102-33.30 GSA's responsibilities for Federal aviation management.

GSA's responsibilities include having:

(a) A single office to carry out Governmentwide responsibilities for Government aircraft management, and publishing that policy;

(b) An interagency committee, whose members represent the executive agencies that use Government aircraft to conduct their official business and advise and consult with GSA on developing policy for managing Government aircraft;

(c) A management information system to collect, analyze, and report information on the inventory, cost, usage, and safety of Government aircraft; and

(d) A set of performance indicators, policy recommendations, and guidance for the procurement, operation, and safety and disposal of Government aircraft.

Subpart B—Acquiring Government Aircraft and Aircraft Parts

§ 102-33.35 Process for acquiring aircraft and aircraft parts.

(a) If the requirements are met for operating an in-house aviation program contained in OMB Circular A-76, and OMB Circular A-11, Part 2, Section 25.5, and Section 51.18, subparagraph (d), you may:

(1) Acquire Federal aircraft when—

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

(ii) You do not have aircraft that can support your agency's official business safely and cost-effectively;

(iii) No commercial or other governmental source is available to provide aviation services safely and cost-effectively; and

(iv) Congress has specifically authorized your agency to purchase, lease, or transfer aircraft and to maintain and operate those aircraft;

(2) Acquire CAS when—

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

(ii) Using commercial aircraft and services is safe and is more cost effective than using Federal aircraft, aircraft from any other governmental source, or scheduled air carriers.

(b) When acquiring aircraft, aircraft selection must be based on need, a strong business case, and life-cycle cost analysis, which conform to OMB Circular A-11, Part 2, Section 25.5.

§ 102-33.40 Acquiring Government aircraft.

To acquire Government aircraft, you must follow the requirements in:

- (a) 31 U.S.C. 1343;
- (b) OMB Circular A-126 Revised;
- (c) OMB Circular A-11, Part 2, Section 25.5;
- (d) OMB Circular A-76; and
- (e) OMB Circular A-94.

§ 102-33.45 Process for budgeting to acquire CAS.

Except for leases and capital leases, for which you must have specific congressional authorization as required by 31 U.S.C. 1343, you may budget to fund your CAS out of your agency's operating budget. Also see § 102-33.40.

§ 102-33.50 Responsibilities when contracting to purchase or capital lease a Federal aircraft or to award a CAS contract.

When purchasing, leasing, or awarding a CAS contract for a Federal aircraft, you must follow 48 CFR chapter 1, unless your agency is exempt.

§ 102-33.55 Minimum requirements for CAS contracts.

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

- (a) Civil standards in 14 CFR that are applicable to the type of operations you are asking the contractor to conduct;
- (b) Applicable military standards; or
- (c) Your agency's Flight Program Standards.

§ 102-33.60 Responsibilities when acquiring aircraft parts.

When acquiring aircraft parts, you must:

- (a) Inspect and verify that all incoming parts are documented as safe for flight prior to installation;

(b) Obtain all logbooks (if applicable) and maintenance records. For guidance on maintaining records for non-military parts, see FAA Advisory Circular 43-9C.

§ 102-33.65 Military FSCAP requirements.

When acquiring FSCAP you must:

- (a) Accept FSCAP only if traceable to the original manufacturer and marked with the DoD Criticality Code; and
- (b) Not install untraceable FSCAP unless inspected and recertified by the OEM or an FAA-approved facility.

§ 102-33.70 Life-limited parts requirements.

When acquiring life-limited parts, you must:

- (a) Identify and inspect the parts, ensuring that they have civil or military-certified documentation; and
- (b) Mutilate and dispose of any expired life-limited parts.

Subpart C—Government Aircraft and Aircraft Parts

§ 102-33.75 Federal aircraft management responsibilities.

You must:

- (a) Establish agency-specific Flight Program Standards;
- (b) Account for the cost of acquiring, operating, and supporting your aircraft;
- (c) Account for the use of your aircraft;
- (d) Maintain and account for aircraft parts;
- (e) Report inventory, cost, and utilization data; and
- (f) Properly dispose of aircraft and parts.

§ 102-33.80 Management responsibilities when hiring CAS.

When hiring CAS, you must:

- (a) Establish agency-specific Flight Program Standards as applicable and require compliance with these standards in your contracts and agreements;
- (b) Account for the cost of your aircraft and services hired as CAS;
- (c) Account for the use of your aircraft hired as CAS; and
- (d) Report the cost and usage data for your CAS hires.

§ 102-33.85 Management accountability and controls for aviation programs.

You must follow OMB Circular A-123 to establish management controls that ensure your aviation program meets its goals and aligns with your agency's mission.

§ 102-33.90 Flight Program Standards.

Flight Program Standards are the minimum requirements to ensure safe, effective, and efficient aircraft operation. They must:

(a) Be specific to your agency's aviation operations, including your CAS;

(b) Meet the requirements identified in §§ 102-33.105 through 102-33.135;

(c) Meet applicable civil or military rules (in particular 49 U.S.C. 40102(a)(37) and 40125), and applicable FAA regulations in 14 CFR; and

(d) Incorporate risk management techniques when civil or military rules do not apply.

§ 102-33.95 Establishing Flight Program Standards.

You must establish Flight Program Standards to address areas not covered by 14 CFR, such as non-certificated aircraft or high-risk operations.

§ 102-33.100 Exemptions from establishing Flight Program Standards.

(a) The Armed Forces (including the U.S. Coast Guard);

(b) Agencies in the Intelligence Community;

(c) Entities outside the executive branch when using aircraft loaned to them by an executive agency (that is, owned by an executive agency, but operated by and on behalf of the loanee) unless the loanee—

- (1) Uses the aircraft to conduct official Government business; or
- (2) Is required to follow §§ 102-33.105 through 102-33.135 under an Agreement governing the loan.

§ 102-33.105 Establishing Flight Program Standards.

You must write, publish, implement, and comply with standards (specific to your agency), which establish or require policies and procedures for:

- (a) Management/administration of your flight program (in this part, "flight program" includes CAS contracts);
- (b) Operation of your flight program;
- (c) Maintenance of your Government aircraft;
- (d) Training for your flight program personnel;
- (e) Safety of your flight program;
- (f) Accident reporting and investigation as appropriate; and
- (g) Reporting to FAIRS as required by this part.

§ 102-33.110 Flight Program Operation Standards.

For management/administration of your flight program, you must establish or require—

- (a) A management structure overseeing operations, safety, training, maintenance, and finances (including contract requirements); and
- (b) Guidance on roles, responsibilities, and authority of flight program personnel.

§ 102–33.115 Flight program operations.

You must establish or require:

- (a) Qualifications and currency requirements for pilots, crewmembers, maintenance, administrative, and mission personnel;
- (b) Duty and flight time limitations for pilots and crewmembers;
- (c) Procedures to track flight time, duty time, training, and medical requirements;
- (d) Compliance with safety notices and operational bulletins;
- (e) Flight-following procedures for lost or downed aircraft;
- (f) Disclosure statement for crewmembers and qualified non-crewmembers flying aboard Government aircraft;
- (g) Manifest with full names, contact info, and flight details for each flight leg;
- (h) Documentation and retention of manifest changes for two years;
- (i) Procedures to reconcile manifests and test periodically;
- (j) Weight, balance, and cargo-loading manifest with retention for 30 days;
- (k) Emergency procedures and equipment for specific missions;
- (l) ALSE inspection and serviceability procedures; and
- (m) Pre-flight risk assessment, including weather, crew rest, flight type, and crew makeup.

§ 102–33.120 Maintenance of Government aircraft.

You must establish or require:

- (a) Procedures to record and track duty time and training of maintenance personnel;
- (b) Aircraft maintenance and inspection programs that comply with whichever is most applicable among—
 - (1) Programs for ex-military aircraft;
 - (2) Manufacturers' programs;
 - (3) FAA-approved programs;
 - (4) FAA-accepted programs; or
 - (5) Your agency's self-prescribed programs;
- (c) Compliance with owning-agency or military safety of flight notices, FAA airworthiness directives, advisory circulars and orders, or mandatory manufacturers' bulletins applicable to the types of aircraft, engines, propellers, and appliances you operate;
- (d) Procedures for operating aircraft with inoperable instruments and equipment;
- (e) Technical support, including appropriate engineering documentation and testing, for aircraft, powerplant, propeller, or appliance repairs, modifications, or equipment installations;
- (f) A quality control system to ensure replacement parts are suitable,

documented, safe for flight, and properly inspected or tested; and

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

§ 102–33.125 Training requirements.

You must establish or require training standards, including initial and recurring instruction for flight personnel on roles, responsibilities, and operational skills.

§ 102–33.130 Aviation safety management.

You must establish or require the following aviation safety management standards:

- (a) A Safety Management System (SMS) that complies with the FAA's current Advisory Circular (AC) that addresses SMSs or an equivalent internationally recognized SMS standard. The SMS should include:
 - (1) Policies that assign SMS roles, with senior management ultimately responsible and qualified safety managers or officers appointed to oversee the aviation safety program, who should be:
 - (i) Experienced as pilots, crewmembers, or in aviation or maintenance program management; and
 - (ii) Graduated or certificated from an approved aviation safety officer course before or within one year of appointment; and
 - (2) An accident prevention program that includes:
 - (i) Measurable procedures;
 - (ii) A system to share safety information;
 - (iii) Safety training;
 - (iv) An aviation safety awards program, including Federal Aviation Awards; and
 - (v) A safety council or committee (for agencies owning aircraft);
 - (b) Risk management procedures that identify and reduce hazards using formal controls and advise senior managers on optimal risk mitigation;
 - (c) Policies requiring independent inspectors to verify compliance with these standards;
 - (d) Procedures allowing reprisal-free reporting of unsafe operations to aviation safety officers and managers;
 - (e) A system to collect and report information on aircraft accidents and incidents (as required by 49 CFR part 830 and § 102–33.270);
 - (f) Policies that identify clear standards for acceptable behavior; and
 - (g) A security program that includes:
 - (1) A designated security manager;
 - (2) A threat assessment process;
 - (3) Procedures for preventing and deterring unlawful acts;

(4) Procedures for responding to threats and unlawful acts;

- (5) Security training for personnel; and

(6) Policies and procedures for a mail security plan that meet the requirements in 41 CFR part 102–192, including protections against mail-borne hazards for staff and facilities, especially when using aircraft for mail delivery.

§ 102–33.135 Responding to aircraft accidents and incidents.

(a) You must establish or require the following standards for responding to aircraft accidents and incidents:

- (1) A policy ensuring compliance with NTSB reporting rules (49 CFR parts 830 and 831), including immediate NTSB notification of accidents/incidents and a method for notifying GSA as required in § 102–33.270;
- (2) An accident/incident response plan based on the NTSB's "Federal Plan," with periodic exercises, and procedures (per FAA AC 120–92) to identify potential accidents or incidents;
- (3) Procedures for participating in NTSB investigations of agency-owned or hired aircraft, and for conducting parallel investigations when appropriate;
- (4) Accident/incident investigation training for personnel involved in NTSB or parallel investigations; and
- (5) Procedures for disseminating, in the event of an aviation disaster that involves one of your Government aircraft, information about eligibility for benefits to anyone injured, to the injured or deceased persons' points of contact (listed on the manifest), and to the families of injured or deceased crewmembers and qualified non-crewmembers.

(b) This section does not supersede 49 CFR parts 830 and 831.

§ 102–33.140 Accountable aircraft operations and ownership costs.

You must account for the operations and ownership costs of your Government aircraft, including UAS, as outlined in the U.S. Government Aircraft CAG at gsa.gov/aviationpolicy, in accordance with OMB Circular A–126. At a minimum, you must:

- (a) Justify acquisitions to support the agency's aviation program;
- (b) Justify the use of Government aircraft in lieu of commercially available aircraft, and the use of one Government aircraft in lieu of another;
- (c) Develop a variable cost rate for each aircraft or aircraft type in your inventory;
- (d) Recover the costs of operating Government aircraft;

(e) Determine the cost effectiveness of various aspects of agency aircraft programs; and

(f) Accumulate aircraft program costs following the procedures defined in the CAG.

§ 102–33.145 Automated system for accounting aircraft costs.

(a) If you own Federal aircraft or operate bailed aircraft, you must use an automated system to track aircraft costs by collecting FAIRS-required data.

(b) Agencies using only CAS aircraft and no Federal aircraft must keep records sufficient for FAIRS reporting, but are not required to have an automated system. See §§ 102–33.260 and 102–33.265 for CAS reporting requirements.

§ 102–33.150 Federal aircraft ownership justification.

After you have held a Federal aircraft for five years, you must:

(a) Justify owning and operating the aircraft by reviewing your operations and establishing that you have a continuing need for the aircraft, using the procedures required in OMB Circular A–76 and OMB Circular A–11, Part 7, Appendix B; and

(b) Review the continuing need for each of your aircraft and the cost-effectiveness of your aircraft operations as directed by OMB Circulars A–11 and A–76, every five years.

§ 102–33.155 Recovering operating cost.

(a) Under 31 U.S.C. 1535 and other statutes, you may need to recover aircraft operating costs for supporting other agencies. The method for setting rates will depend on the statutory authorities under which you acquired and operate your aircraft:

- (1) The variable cost recovery rate; or
- (2) The full cost recovery rate.

(b) See the U.S. Government Aircraft CAG for definitions.

§ 102–33.160 Accounting for the use of Government aircraft.

When accounting for the use of Government aircraft, including UAS, you must document all flights and keep this documentation for two years after the date of the flight. For each flight, record the:

- (a) Aircraft's registration mark;
- (b) Owner and operator;
- (c) Purpose of the flight;
- (d) Departure and destination points;
- (e) Flight dates and times;
- (f) Manifest; and
- (g) Names of the pilots and crewmembers.

§ 102–33.165 Carrying passengers on Government aircraft.

(a) You may carry passengers only on aircraft that you operate or require contractually to be operated in accordance with the rules and requirements in 14 CFR; and

(b) For certain kinds of travel, your agency must justify passengers' presence on Government aircraft.

Note 1 to § 102–33.165: See OMB Circular A–126 and the Federal Travel Regulation (FTR) in 41 CFR subtitle F for complete information on authorizing travel and analyzing costs before authorizing travel on Government aircraft.

§ 102–33.170 Aircraft parts management.

You must manage aircraft parts by ensuring proper storage, protection, maintenance, and recordkeeping throughout their life cycle.

§ 102–33.175 The use of military FSCAP on non-military FAA-type certificated Government aircraft.

You may use dual-use military FSCAP on non-military aircraft operated under restricted or standard airworthiness certificates if the parts are inspected and approved for such installation by the FAA. See detailed guidance in FAA Advisory Circular 20–142, Change (1).

§ 102–33.180 Life-limited parts and FSCAP.

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

Subpart D—Disposing or Replacing of Government Aircraft and Aircraft Parts

§ 102–33.185 Disposing or replacing aircraft and aircraft parts.

Before disposing of aircraft or parts, determine if they are excess to your agency's mission.

§ 102–33.190 Reporting excess of both operational and non-operational aircraft.

You may report as excess, or replace both operational and non-operational aircraft, by following the rules governing excess personal property and exchange/sale (see 41 CFR parts 102–36 and 102–39, respectively).

§ 102–33.195 Declassifying aircraft.

(a) A declassified aircraft is no longer an aircraft but a set of parts for ground use only.

(b) Retain documentation and traceability for all replacement parts, recorded under the correct Federal Supply Classification groups.

(c) For disposal of the property remaining after declassification of an aircraft, you must follow the property disposal regulations in 41 CFR parts 102–36, 102–37, 102–38 and 102–39.

§ 102–33.200 Documenting FSCAP or life-limited parts installed on aircraft.

You must comply with the documentation procedures described in § 102–33.175 if your aircraft and/or engines contain FSCAP or life-limited parts that you will report as excess or replace.

§ 102–33.205 Reporting requirements for excess, replacement, or declassified aircraft in FAIRS.

(a) When you report as excess or replace an aircraft you must report the change in inventory to FAIRS.

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

- (1) The disposal method;
- (2) The disposal date; and
- (3) The identity and type of recipient.

§ 102–33.210 Excess aircraft.

If aircraft are excess, you must:

- (a) Reassign them within your agency if a sub-agency can use them; or
- (b) Report them as excess property to GSA if no sub-agencies can use them.

§ 102–33.215 Replacing aircraft through exchange/sale.

Refer to the procedures in 41 CFR part 102–39 for replacing aircraft via exchange/sale. Exchange/sell an aircraft to another executive agency or negotiate a fixed-price sale to a SASP.

Note 1 to § 102–33.215: Some agencies may have special authorization to recover costs.

§ 102–33.220 Special disclaimers for non-certificated aircraft operated as public aircraft.

When exchanging/selling non-certificated aircraft, the offering must include the following statement:

Warning: This aircraft may not meet FAA requirements. You are responsible for ensuring compliance with 14 CFR and obtaining any required FAA inspections or modifications.

The purchaser agrees the Government is not liable for any harm from the aircraft's use or disposal and will hold the Government harmless from related claims. The aircraft may not meet 14 CFR standards and may require inspection before flight.

- All civil and public aircraft must have a valid registration issued by the FAA as required by 14 CFR Chapter I.

- Civil aircraft must have a valid airworthiness certificate to operate in the U.S. airspace.

- The aircraft must conform to its FAA Type Certificate to be eligible for a standard air worthiness certificate.

- Aircraft without a valid airworthiness certificate may qualify for a special FAA one-time flight permit for relocation, such as for storage, repair, inspection, or display. Approval is based on the aircraft's safety for flight.

- Purchasers of surplus military or foreign aircraft without an FAA Type Certificate may be unable to obtain an airworthiness certificate or special flight permit.

- An aircraft with proper maintenance and inspection records simplifies airworthiness determination. Contact your nearest FAA Flight Standards District Office to discuss your responsibilities. Find office locations on the FAA website (<http://www.faa.gov/>).

- When purchasing an aircraft for spare parts and scrapping the airframe, you must declassify the aircraft, complete the registration form, and send it to the FAA.

Subpart E—Reporting Information on Government Aircraft

§ 102–33.225 Government aircraft report requirement.

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

(a) Is an executive agency of the U.S. Government; and

(b) Owns, bails, borrows, loans, leases, rents, charters, or contracts for (or obtains by ISSA) Government aircraft.

§ 102–33.230 Exemptions from reporting information to GSA on Government aircraft.

The following federally funded activities are exempt from the requirement to report information to GSA on Government aircraft:

(a) The Armed Forces (including the U.S. Coast Guard); and

(b) Agencies in the Intelligence Community.

§ 102–33.235 Required reporting on Government aircraft.

Report the following to GSA via FAIRS:

(a) Inventory data for Federal aircraft, including UAS;

(b) Cost and utilization data for Federal aircraft, including UAS;

(c) Cost and utilization data for CAS aircraft and aviation services;

(d) Accident and incident data; and

(e) Results of competition studies per OMB Circular A–76 for aircraft and related services acquisition.

§ 102–33.240 FAIRS.

FAIRS, is a secure website operated by GSA, collects and reports data on Federal and CAS aircraft inventories, costs, and usage. The U.S. Government Aircraft Cost Accounting Guide (CAG) (see <https://www.gsa.gov/aviationpolicy>) contains the business rules for using the system.

§ 102–33.245 Timeline for FAIRS reports.

(a) Report any changes in your Federal aircraft inventory within 14 calendar days.

(b) Report cost and utilization data to FAIRS at the end of each fiscal quarter. You may submit data more frequently. Additionally, a quarter's data may be reported in the following quarter if necessary.

§ 102–33.250 Federal inventory.

Federal inventory data includes information on each of the operational and non-operational Federal aircraft and UAS that you own, bail, borrow, or loan.

§ 102–33.255 Declassify a Federal aircraft.

(a) To declassify a Federal aircraft, you must send a letter to the Deputy Associate Administrator, GSA, requesting approval to declassify the aircraft, stating it is non-operational. Include the following:

(1) Relevant Federal Supply Classification (FSC) groups, if applicable; and

(2) Description of the aircraft's condition.

(b) When an aircraft is lost or destroyed, or is otherwise non-operational and you want to retain it, you may declassify it and remove it from your Federal aircraft inventory.

§ 102–33.260 Federal aircraft cost and utilization data.

(a) You must report costs and flight hours for each Federal aircraft (including UAS), including both Federal and CAS expenses. For data element details, see the U.S. Government Aircraft CAG at www.gsa.gov/aviationpolicy.

(b) All executive agencies—excluding the Armed Forces and Intelligence Community—must report Federal aircraft cost and utilization data.

(c) Report data for loaned aircraft only if Federal funds were used.

§ 102–33.265 CAS cost and utilization data.

(a) Executive agencies, excluding the Armed Forces and Intelligence Community, must report CAS cost and utilization data if they make payments for such services:

(1) Charter or rent aircraft;

(2) Lease or lease-purchase aircraft;

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

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

(b) You must report:

(1) Costs and flight hours for each hired CAS aircraft; and

(2) Costs and contract periods for related aviation services, whether by contract or ISSA.

(c) Do not report CAS used to support Federal (owned) aircraft. The owning agency must report all related costs and usage in FAIRS. See the CAG at www.gsa.gov/aviationpolicy.

§ 102–33.270 Aircraft accident and incident.

Report all NTSB-reportable aviation accidents and incidents to GSA within 14 days at <https://www.gsa.gov/aviationpolicy>.

§ 102–33.275 Development of performance indicators.

Your agency must develop performance indicators to measure the achievement of key aviation program objectives:

(a) Measure the aviation program's contribution to the agency's mission;

(b) Justify aviation program budget requests; and

(c) Demonstrate the program's effectiveness and efficiency.

■ 4. Revise part 102–34 to read as follows:

PART 102–34—MOTOR VEHICLE MANAGEMENT

Subpart A—General Provisions

Sec.

102–34.5 Scope of this part.

102–34.10—102–34.15 [Reserved]

102–34.20 Motor vehicles not covered by this part.

102–34.25—102–34.30 [Reserved]

102–34.35 Definitions.

Subpart B—Obtaining Fuel Efficient Motor Vehicles

102–34.40 Government motor vehicle fuel efficiency requirements.

102–34.45—102–34.50 [Reserved]

102–34.55 Fleet average fuel economy standards.

102–34.60—102–34.80 [Reserved]

Subpart C—Identifying and Registering Motor Vehicles

102–34.85 [Reserved]

102–34.90 Government motor vehicle identification.

102–34.95 Government motor vehicle license plates.

102–34.110—102–34.115 [Reserved]

102–34.120 Government motor vehicle registration.

102–34.125—102–34.150 [Reserved]

102–34.155 Government motor vehicle identification exemptions.

102–34.160—102–34.195 [Reserved]

Subpart D—Government Motor Vehicle Use

102–34.200 Government motor vehicle official use.

102–34.205 Government motor vehicle use for transportation between an employee's residence and place of employment (home-to-work transportation).

102–34.210 Government motor vehicle use for transportation between places of employment and mass transit facilities.

102–34.215 [Reserved]

102–34.220 Government motor vehicle misuse.

102–34.225–102–34.250 [Reserved]

Subparts E–I [Reserved]

Subpart J—Government Motor Vehicle Data Collection and Reporting

102–34.330 Federal Fleet Report.

102–34.335 [Reserved]

102–34.340 Fleet management information systems.

102–34.345 Government motor vehicle records.

Subpart K—[Reserved]

Authority: 31 U.S.C. 1344; 40 U.S.C. 121(c); 40 U.S.C. 609, 40 U.S.C. 611; 40 U.S.C. 17503; 49 U.S.C. 32917; E.O. 12375, 47 FR 34105, 3 CFR, 1982 Comp., p. 202.

Subpart A—General Provisions

§ 102–34.5 Scope of this part.

(a) This part governs the economical and efficient management and control of motor vehicles that the Government owns, leases commercially or leases through the General Services Administration Fleet (GSA Fleet®). Executive agencies must comply with the provisions of this entire part.

(b) This part also governs the use of Government passenger carriers to transport employees between their homes and places of employment (Home-to-Work Transportation). The Home-to-Work Transportation section (§ 102–32.405 of this chapter) applies to Federal agency employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

(c) Implementing guidance and related policies are contained in separate customer service guides that may be found at <https://www.gsa.gov/vehiclepolicy>. For more information, contact GSA at vehicle.policy@gsa.gov.

§§ 102–34.10–102–34.15 [Reserved]

§ 102–34.20 Motor vehicles not covered by this part.

Motor vehicles not covered by this part are:

(a) Military design motor vehicles;

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

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

(d) Motor vehicles regularly used by an agency to perform investigative, law

enforcement, or intelligence duties, if the head of the agency determines that exclusive control of the vehicle is essential for effective performance of duties, although such vehicles are subject to subpart D of this part with the exception of § 102–34.205 and subpart J of this part.

§§ 102–34.25–102–34.30 [Reserved]

§ 102–34.35 Definitions.

The following definitions apply to this part:

Agency head means the highest official of a Federal agency.

Clear and present danger means highly unusual circumstances that present a threat to the physical safety of the employee or their property when the danger is real, immediate or imminent, not merely potential, and the use of a Government passenger carrier would provide protection not otherwise available.

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

Commercial lease or lease commercially means obtaining a motor vehicle by contract or other arrangement from a commercial source for 120 continuous days or more.

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

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

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

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

Executive agency means an executive department, a Government corporation, and an independent establishment.

Federal agency means:

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

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

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

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

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

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

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

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

(9) The Smithsonian Institution;

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

(11) The United States Postal Service.

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

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

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

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

GSA Fleet lease means obtaining a motor vehicle from the GSA Fleet®.

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

(1) A passenger automobile having heavy duty components for electrical,

cooling and suspension systems and at least the next higher cubic inch displacement or more powerful engine than is standard for the automobile concerned;

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

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

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

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

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

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

Motor vehicle identification means the legends “For Official Use Only” and “U.S. Government” placed on a motor vehicle plus other legends readily identifying the department, agency, establishment, corporation, or service by which the motor vehicle is used.

Motor vehicle purchase means buying a motor vehicle from a commercial source, usually a motor vehicle manufacturer or a motor vehicle manufacturer’s dealership.

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

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

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

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

Passenger carrier means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is

owned (including those that have come into the possession of the Government by forfeiture or donation), leased, or rented (non-temporary duty (TDY)) by the United States Government.

Reportable motor vehicles are any Government motor vehicles used by an executive agency or activity, including those used by contractors. Also included are motor vehicles designed or acquired for a specific or unique purpose, including motor vehicles that serve as a platform or conveyance for special equipment, such as a trailer. Excluded are material handling equipment and construction equipment not designed and used primarily for highway operation (e.g., if it must be trailered or towed to be transported).

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

Subpart B—Obtaining Fuel Efficient Motor Vehicles

§ 102–34.40 Government motor vehicle fuel efficiency requirements.

(a) Executive agencies operating domestic fleets must comply with the following motor vehicle fuel efficiency requirements, specifically applicable to passenger automobiles:

(1) Obtain the minimum size of motor vehicle necessary to fulfill the agency’s mission;

(2) Obtain motor vehicles that achieve maximum fuel efficiency;

(3) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet the agency’s mission;

(4) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, obtain midsize or smaller sedans; and

(5) Obtain large sedans only when such motor vehicles are essential to the agency’s mission.

(b) Agencies must establish and document a structured vehicle allocation methodology to determine the appropriate size and number of motor vehicles.

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

operating, and managing Government motor vehicles.

§§ 102–34.45–102–34.50 [Reserved]

§ 102–34.55 Fleet average fuel economy standards.

(a) Section 32917 of title 49, U.S. Code, and E.O. 12375 require that each executive agency meet the fleet average fuel economy standards in place as of January 1 of each fiscal year. The standards for passenger automobiles are prescribed in 49 U.S.C. 32902(b). The Department of Transportation publishes the standards for light trucks and amendments to the standards for passenger automobiles at <https://www.dot.gov>.

(b) Guidance on fleet average fuel economy standards including calculation methods, exemption request procedures, records management protocols, and compliance requirements is available in a customer service guide that may be found at <https://www.gsa.gov/vehiclepolicy>. For more information, contact GSA at vehicle.policy@gsa.gov.

(c) This section does not apply to military design motor vehicles, law enforcement motor vehicles, or motor vehicles intended for emergency rescue.

§§ 102–34.60–102–34.80 [Reserved]

Subpart C—Identifying and Registering Motor Vehicles

§ 102–34.85 [Reserved]

§ 102–34.90 Government motor vehicle identification.

All Government motor vehicles must display the following identification unless exempted under this subpart:

- (a) “For Official Use Only”;
- (b) “U.S. Government”; and
- (c) Identification that readily identifies the agency owning the vehicle.

§ 102–34.95 Government motor vehicle license plates.

U.S. Government license plates must be used on Government motor vehicles unless exempted under this subpart. U.S. Government license plates may not be used on motor vehicles not owned or leased by the Government. U.S. Government license plates for domestic fleets may be obtained from the U.S. Department of Justice, UNICOR (Federal Prison Industries). GSA has established a Memorandum of Understanding (MOU) on behalf of all Federal agencies with UNICOR for the procurement of official U.S. Government license plates. Each agency must execute an addendum to this MOU providing plate design and specific ordering and payment

information before ordering license plates. U.S. Government license plate design will have numbers preceded by a letter code that designates the owning agency for the motor vehicle. For assistance with any issues involving license plates including to obtain a new license plate code designation, contact GSA at vehicle.policy@gsa.gov.

§§ 102–34.110–102–34.115 [Reserved]

§ 102–34.120 Government motor vehicle registration.

Government motor vehicles displaying U.S. Government license plates and motor vehicle identification must be registered in the Federal Government Motor Vehicle Registration System. GSA Fleet® may register motor vehicles leased from GSA Fleet®. Motor vehicles that have been exempted from the requirement to display official U.S. Government license plates under this subpart must be registered and inspected in accordance with the laws of the jurisdiction where the motor vehicle is regularly operated.

§§ 102–34.125–102–34.150 [Reserved]

§ 102–34.155 Government motor vehicle identification exemptions.

(a) The head of the agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification stating that identifying the motor vehicle would endanger the security of the vehicle occupants or otherwise compromise the agency mission. A limited exemption may last from one day up to three years before recertification is required. Motor vehicles used primarily for investigative, law enforcement, intelligence, or security duties have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification when identifying these motor vehicles would interfere with those duties. Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 have special exemptions from the requirement to display motor vehicle identification.

(b) For motor vehicles that are exempt from motor vehicle identification requirements, display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated.

§§ 102–34.160–102–34.195 [Reserved]

Subpart D—Government Motor Vehicle Use

§ 102–34.200 Government motor vehicle official use.

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

§ 102–34.205 Government motor vehicle use for transportation between an employee's residence and place of employment (home-to-work transportation).

Employees engaged in field work, or faced with a clear and present danger, an emergency, or a compelling operational consideration may utilize home-to-work transportation only when authorized by the agency head after making the necessary determination under 31 U.S.C. 1344.

(a) This section covers the use of Government passenger carriers to transport employees between their homes and places of work. This section covers Federal agency employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

(b) This section does not apply to home-to-work transportation use in conjunction with official travel—including TDY or relocation, performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties when designated in writing as such by an agency head, or transportation between places of employment and mass transit facilities.

(c) The agency head may not delegate the authority to make home-to-work determinations.

(d) Home-to-work determinations should be completed before an employee is provided home-to-work transportation unless it is impracticable to do so.

(e) The comfort and/or convenience of an employee is not considered sufficient justification to authorize a home-to-work transportation determination.

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

(g) Determinations must be in writing and include the name and title of the employee, the reason for authorizing home-to-work transportation, and anticipated duration of the authorization. An agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs. If positions are identified rather than named individuals, the determination for field work should include sufficient information to satisfy an audit, if necessary. This information should include the job title, number, and operational level where the work is to be performed.

(h) Initial determinations are effective for no longer than two years for field work, updated as necessary; and fifteen days for other circumstances.

(i) The agency head may approve unlimited subsequent determinations, when the need for home-to-work transportation exceeds the initial period, for no longer than two years each for field work, updated as necessary; and ninety calendar days each for other circumstances.

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

(k) Report your determinations to Congress no later than 60 calendar days after approval and quarterly for any subsequent determinations to the following congressional committees:

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

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

§ 102–34.210 Government motor vehicle use for transportation between places of employment and mass transit facilities.

Government motor vehicles may be used for transportation between places of employment and mass transit facilities in accordance with 31 U.S.C. 1344(g) under the following conditions:

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

(b) There is no safe and reliable commercial or duplicative Federal mass

transportation service that serves the same route on a regular basis;

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

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

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

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

§ 102–34.215 [Reserved]

§ 102–34.220 Government motor vehicle misuse.

Willful misuse of a Government motor vehicle will be reported to the agency head to investigate and, if appropriate, take disciplinary action under 31 U.S.C. 1349 or the violation will be reported to the Attorney General for prosecution under 18 U.S.C. 641.

§§ 102–34.225–102–34.250 [Reserved]

Subparts E–I [Reserved]

Subpart J—Government Motor Vehicle Data Collection and Reporting

§ 102–34.330 Federal Fleet Report.

The Federal Fleet Report (FFR) is an annual summary of Federal fleet statistics based upon fleet composition at the end of each fiscal year and vehicle use and cost during the fiscal year. The FFR is compiled by GSA from information submitted by Federal agencies. The FFR is designed to provide essential statistical data for worldwide Federal motor vehicle fleet operations. Annually, agencies are required to submit comprehensive motor vehicle data to GSA using a standardized Federal reporting system as designated by GSA. Agencies must provide detailed asset-level data for each vehicle owned, leased, managed, and operated by the Federal Government. GSA publishes the FFR aggregate metrics on inventory, acquisitions, operating costs, miles traveled and fuel consumption.

§ 102–34.335 [Reserved]

§ 102–34.340 Fleet management information systems.

Each agency must have a fleet management information system at the department or agency level that identifies and collects accurate inventory, cost, and use data that covers the complete lifecycle of each motor vehicle (acquisition, operation,

maintenance, and disposal); and provides the information necessary to satisfy both internal and external reporting requirements, including cost per mile, fuel costs for each motor vehicle, and data required for annual collection and reporting of Federal fleet asset-level data.

§ 102–34.345 Government motor vehicle records.

Each agency is responsible for developing and keeping adequate accounting and reporting procedures for Government motor vehicles. These will ensure accurate recording of inventory, cost, and operational data needed to manage and control motor vehicles, and will satisfy reporting requirements.

Subpart K—[Reserved]

■ 5. Revise part 102–35 to read as follows:

PART 102–35—DISPOSITION OF PERSONAL PROPERTY

Sec.

102–35.5 Scope.

102–35.10 Excess personal property disposal process.

102–35.15 Deviations.

102–35.20 Definitions.

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

§ 102–35.5 Scope.

The General Services Administration's (GSA) personal property disposal regulations are contained in this part and parts 102–36 through 102–42 of this subchapter. With two exceptions, this part covers the disposal of personal property under the custody and control of executive agencies located in the United States (U.S.), the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. The exceptions to this coverage are part 102–39 of this subchapter, which applies to the replacement of all property owned by executive agencies worldwide using the exchange/sale authority, and §§ 102–36.210 through 102–36.225 of this subchapter, which apply to the disposal of foreign excess personal property. All executive agencies must comply with the provisions of this part and parts 102–36 through 102–42 unless authorized by specific, separate statutory authority to do otherwise. The legislative and judicial branches are encouraged to follow this part and parts 102–36 through 102–42 for property in their custody and control.

§ 102–35.10 Excess personal property disposal process.

(a) Personal property not needed by your activity must first be offered for use elsewhere within your agency via internal screening. If the property is not needed by any activity within your agency, your agency must report the property as excess to GSA for possible transfer to eligible recipients.

(b) If no Federal agencies request the excess personal property, GSA declares the property to be surplus and makes it available for donation to eligible non-Federal recipients.

(c) Surplus personal property not selected for donation is offered for sale to the public by competitive offerings. Sales must be conducted in accordance with part 102–38 of this subchapter.

(d) If a written determination is made that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies. This determination may occur at any stage of the disposal process.

§ 102–35.15 Deviations.

All provisions in parts 102–36 through 102–42 of this subchapter are subject to deviation with adequate justification except for those mandated by statute, as described in §§ 102–39.20(a)(2) and 102–39.30 of this subchapter. See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation.

§ 102–35.20 Definitions.

The following definitions apply to GSA's personal property regulations in parts 102–35 through 102–42 of this subchapter.

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

Acquire means to procure or otherwise obtain personal property, including by lease.

Acquisition cost means the original purchase price of an item.

Allocation means the process by which GSA identifies the recipient to receive excess property per § 102–36.140 of this subchapter, or surplus property per § 102–37.40 of this subchapter.

Ammunition as defined in 18 U.S.C. 921(a)(17), means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

Ammunition components mean the individual parts of ammunition,

including cartridge cases, primers, bullets/projectiles, and propellant powder.

Auction means a competitive sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders with the option to increase their bids if they choose. Bids are submitted as specified by the selling agency. The bidder with the highest bid at the close of each bidding process is normally awarded the property.

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Biologicals means hazardous materials associated with the products and operations of applied biology and/or biochemistry, especially serums, vaccines, etc., produced from microorganisms.

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

Combat material means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

Commerce Control List Items (CCLIs) are dual use (commercial/military) items that are subject to export control by the Bureau of Industry and Security, Department of Commerce. These items have been identified in the U.S. Export Administration Regulations (15 CFR part 774) as export controlled for reasons of national security, crime control, technology transfer, and scarcity of materials.

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

Controlled substances mean:

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

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

(3) Any other drug or substance that by international treaty, convention, or protocol is to be controlled by the U.S.

Cooperative means the organization or entity that has a cooperative agreement with a Federal agency.

Cooperative agreement means a legal instrument reflecting a relationship between a Federal agency and a non-Federal recipient, made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–6308), under any or all the following circumstances:

(1) The purpose of the relationship is the transfer, between a Federal agency and a non-Federal entity, of money, property, services, or anything of value to accomplish a public purpose authorized by law, rather than by purchase, lease, or barter, for the direct benefit or use of the Federal Government.

(2) Substantial involvement is anticipated between the Federal agency and the cooperative during the performance of the agreed upon activity.

(3) The cooperative is a State or local government entity, or any person or organization authorized to receive Federal assistance or procurement contracts.

Demilitarization means, as defined by the Department of Defense, the act of destroying the military capabilities inherent in certain types of equipment or material. Such destruction may include mutilation, cutting, crushing, scrapping, melting, burning, or alteration to prevent further use of the item for its originally intended purpose.

Donee means any of the following entities that receive Federal surplus personal property through a State Agency for Surplus Property (SASP):

(1) A service educational activity (SEA).

(2) A public agency 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 (FAA) as discussed in part 102–37 of this subchapter.)

(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.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Excess personal property means any personal property under the control of any Federal agency that is no longer required for that agency's needs, as determined by the agency head or designee.

Exchange means to replace personal property by trade or trade-in with the supplier of the replacement property.

Exchange/sale means to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned government corporation.

Extremely hazardous personal property means property hazardous to the extent that it generally requires special handling such as licensing and training of handlers, protective clothing, and special containers and storage. Because of its extreme flammability, toxicity, corrosivity or other perilous qualities, it could constitute an immediate danger or threat to life and property, and which usually have specialized uses under controlled conditions. It is also material which has been determined by the holding agency to endanger public health and safety or the environment if released to the public.

Fair market value means the best estimate of the gross sales proceeds if the property were to be sold in a public sale.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the Architect's direction).

Firearm means any weapon, silencer, or destructive device designed to, or readily convertible to, expel a projectile by the action of an explosive, as defined in 26 U.S.C. 5845 and/or 18 U.S.C. 921(a)(3). Excludes antique firearms as defined in 26 U.S.C. 5845(g).

Flight Safety Critical Aircraft Part (FSCAP) (see § 102–33.20 of this subchapter).

Foreign excess personal property is any U.S. owned excess personal property located outside the U.S., the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Federated States of Micronesia, the Marshall Islands,

Palau, and the Northern Mariana Islands.

Forfeited property means personal property that the Government has acquired ownership of through a summary process or court order pursuant to any law of the U.S.

Grant means a type of assistance award and a legal instrument which permits a Federal agency to transfer money, property, services or other things of value to a grantee when no substantial involvement is anticipated between the agency and the recipient during the performance of the contemplated activity.

Hazardous personal property means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601–2609).

Holding agency refers to the agency having accountability for, and generally possession of, the property involved.

Intangible personal property means personal property in which the existence and value of the property is generally represented by a descriptive document rather than the property itself. Examples include patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, and shares of stock.

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

Life-limited part (see § 102–33.20 of this subchapter).

Line item means a single line entry, on a reporting form or transfer order, for items of property of the same type having the same description, condition code, and unit cost.

Munitions List Item (MLI) means property and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)).

National property management officer means an official, designated in accordance with § 102–36.10(b) of this subchapter, who is responsible for ensuring effective acquisition, use, and

disposal of excess property within your agency.

Negotiated sale means a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

Nonappropriated fund activity means an activity or entity that is not funded by money appropriated from the general fund of the U.S. Treasury, such as post exchanges, ship stores, military officers' clubs, veterans' canteens, and similar activities. Such property is not Federal property.

Offer to sell means a notice listing the terms and conditions for bidding on an upcoming sale of personal property. Prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

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

Perishable means an item subject to rapid deterioration, spoilage or death, when removed from special storage conditions or care, such as fresh food, animals, and plants.

Personal property means any property, except real property. The term excludes records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

Project grantee means a recipient of a grant made for a specific purpose and with a specific termination date.

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

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 body means 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.

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

Replacement means the process of acquiring personal property to be used in place of personal property that is still needed but:

- (1) No longer adequately performs the tasks for which it is used; or
- (2) Does not meet the agency's need as well as the personal property to be acquired.

Salvage means property that has value greater than its basic material content but for which repair or rehabilitation is clearly impractical and/or uneconomical.

Scrap means property that has no value except for its basic material content.

Screening 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.

Screening period means the period in which excess and surplus personal property are made available for excess transfer or surplus donation to eligible recipients.

Sealed bid sale means a competitive sale where bid prices are kept confidential until the bid opening. Bids are submitted as specified by the selling agency. All bids are held for public disclosure at a designated time and place.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and handling will be the responsibility of the agency until final ownership is determined by the judicial process.

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 U.S. Coast Guard preparatory schools.

Shelf-life item is any item that deteriorates over time or has unstable characteristics such that a storage period must be assigned to assure the item is issued within that period to provide satisfactory performance.

Similar means the acquired item(s) and replaced item(s):

- (1) Are identical; or
- (2) Fall within a single Federal Supply Classification (FSC) Group of property (includes all forms of property within a single FSC Group); or
- (3) Are parts or containers for similar end items; or
- (4) Are designed or constructed for the same general purpose (including all forms of property regardless of the FSC Group to which they are assigned).

Spot bid sale means a competitive sale where immediately following the offering of the property, bids are

examined, and awards are made or bids rejected on the spot. Bids are submitted as specified by the selling agency and must not be disclosed prior to announcement of award.

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

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

Surplus personal property (surplus) means excess personal property 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 as surplus.

Transfer with reimbursement means a transfer of excess personal property between Federal agencies where the recipient is required to pay, *i.e.*, reimburse the holding agency, for the property.

Transferee means a public airport receiving surplus property from a holding agency through the FAA, or SASP.

Unclaimed property means personal property unknowingly abandoned and found on premises owned or leased by the Government, *i.e.*, lost and found property.

United States (U.S.) means all the 50 States and the District of Columbia.

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

Vessels means ships, boats and craft designed for navigation in and on the water, propelled by oars or paddles, sail, or power.

Voluntarily abandoned property means personal property abandoned to any Federal agency in a way that immediately vests title to the property in the Government. There must be written or circumstantial evidence that the property was intentionally and voluntarily abandoned. This evidence should be clear that the property was simply not lost by the owner.

■ 6. Revise part 102–36 to read as follows:

PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

- 102–36.5 Scope.
- 102–36.10 Agency responsibilities.
- 102–36.15 Contractors.
- 102–36.20 GSA responsibilities.

Subpart B—Acquiring Excess Personal Property for Our Agency

- 102–36.25 Eligibility.
- 102–36.30 Maximize use of excess personal property.
- 102–36.35 Considerations.
- 102–36.40 Excess personal property transfer costs.
- 102–36.45 Transfer with reimbursement.
- 102–36.50 Excess personal property screening period.
- 102–36.55 Agency responsibilities in transfer order processing.
- 102–36.60 Excess personal property removal.
- 102–36.65 Direct transfers.

Subpart C—Acquiring Excess Personal Property for Non-Federal Recipients

- 102–36.70 Acquiring excess personal property for non-Federal activities.
- 102–36.75 Responsibilities when acquiring excess personal property for use by a non-Federal recipient.
- 102–36.80 Nonappropriated fund activity and title retention.
- 102–36.85 Transfers of personal property owned by a nonappropriated fund activity.
- 102–36.90 Contractor restrictions.
- 102–36.95 Cooperative limitations.
- 102–36.100 Grantee requirements.
- 102–36.105 Fee when furnishing excess personal property to project grantees.
- 102–36.110 Type of excess personal property furnished to project grantees.
- 102–36.115 Excess personal property for cannibalization purposes by grantees.
- 102–36.120 Limit on excess personal property furnished to grantees.

Subpart D—Disposition of Excess Personal Property

- 102–36.125 Reporting requirements and exceptions.
- 102–36.130 Accountability.
- 102–36.135 Physical custody.
- 102–36.140 Competing requests.
- 102–36.145 Disposal of excess personal property without GSA approval.
- 102–36.150 Disposal process withdrawal.
- 102–36.155 Reimbursement conditions.
- 102–36.160 Reimbursement amount.
- 102–36.165 Abandonment/destruction.
- 102–36.170 Abandonment/destruction authority restrictions.

Subpart E—Personal Property Whose Disposal Requires Special Handling

- 102–36.175 Excess aircraft disposal.
- 102–36.180 Excess Flight Safety Critical Aircraft Parts (FSCAP) disposal.
- 102–36.185 FSCAP identification.
- 102–36.190 FSCAP Criticality Codes.
- 102–36.195 Disposing of life-limited aircraft parts without an FSCAP designation.

- 102–36.200 Special requirements for disaster relief.
- 102–36.205 Excess firearms disposal.
- 102–36.210 Agency responsibilities in foreign excess personal property disposal.
- 102–36.215 Foreign excess personal property disposal options.
- 102–36.220 GSA assistance in foreign excess personal property disposal.
- 102–36.225 Foreign excess personal property transportation costs.
- 102–36.230 Gift disposal.
- 102–36.235 Money or intangible personal property disposal.
- 102–36.240 Gift disposal other than intangible personal property.
- 102–36.245 Excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs).
- 102–36.250 Identifying DEMIL requirements.
- 102–36.255 Excess shelf-life items.
- 102–36.260 Excess medical shelf-life items held for national emergency purposes.
- 102–36.265 Transferring or exchanging excess medical shelf-life items with other Federal agencies.
- 102–36.270 Excess vessels.
- 102–36.275 Excess hazardous personal property.

Authority: 40 U.S.C. 121(c); 40 U.S.C. 521.

Subpart A—General Provisions

§ 102–36.5 Scope.

This part covers excess personal property disposal located in the United States (U.S.), the U.S. Virgin Islands, American Samoa, Guam, Puerto Rico, the Federated States of Micronesia, the Marshall Islands, Palau, and the Northern Mariana Islands by executive agencies. Use of pronouns “we,” “you,” and their variants throughout this part refer to the agency.

§ 102–36.10 Agency responsibilities.

(a) Agency procurement policies must require consideration of excess personal property before authorizing procurement of new personal property.

(b) You are encouraged to designate national and regional property management officials to:

(1) Promote the use of available excess personal property to the maximum extent practicable by your agency.

(2) Review and approve the acquisition and disposal of excess personal property.

(3) Ensure that any agency implementing procedures comply with this part.

(c) When acquiring excess personal property, you must:

(1) Limit the quantity acquired to that which is needed to adequately perform the function necessary to support the mission of your agency.

(2) Establish controls over the processing of excess personal property transfer orders.

(3) Facilitate the timely pickup of acquired excess personal property from the holding agency.

(d) While excess personal property you have acquired is in your custody, or the custody of your non-Federal recipients and the Government retains title, you and/or the non-Federal recipient must do the following:

(1) Establish and maintain a system for property accountability.

(2) Protect the property against hazards.

(3) Perform the care and handling of personal property. "Care and handling" includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting excess and surplus personal property, and destroying or rendering innocuous property which is dangerous to public health, public safety, or national security.

(4) Maintain appropriate inventory levels.

(5) Continuously monitor the personal property under your control to assure maximum use and develop and maintain a system to prevent and detect nonuse, improper use, unauthorized disposal, or destruction of personal property.

(e) When you no longer need personal property to carry out the mission of your program, you must:

(1) Offer the property for reassignment to other activities within your agency.

(2) Promptly report excess personal property to the General Services Administration (GSA) when it is no longer needed by any activity within your agency for further reuse by eligible recipients.

(3) Continue the care and handling of excess personal property while it goes through the disposal process.

(4) Facilitate the timely transfer of excess personal property to other Federal agencies or authorized eligible recipients.

(5) Provide reasonable access to authorized personnel for inspection and removal of excess personal property.

(6) Ensure that final disposition complies with applicable environmental, health, safety, and national security regulations.

§ 102–36.15 Contractors.

You may use service contracts to perform disposal functions that are not inherently governmental, such as warehousing or custodial duties. You are responsible for ensuring that the contractor conforms with the requirements of title 40 U.S.C. and the regulations in this chapter, and any other applicable statutes and regulations when performing these functions.

§ 102–36.20 GSA responsibilities.

(a) Screen and offer available excess personal property to Federal agencies and eligible non-Federal recipients.

(b) Approve and process transfers of excess personal property to eligible activities.

(c) Determine the amount of reimbursement for transfers of excess personal property when appropriate.

(d) Conduct sales of surplus and exchange/sale personal property when requested by an agency.

(e) Maintain an automated system to facilitate the reporting and transferring of excess personal property.

Subpart B—Acquiring Excess Personal Property for Our Agency

§ 102–36.25 Eligibility.

The following are eligible to acquire excess personal property:

(a) Federal agencies (including for authorized use by their contractors, cooperatives, and project grantees).

(b) The Senate.

(c) The House of Representatives.

(d) The Architect of the Capitol and any activities under the Architect's direction.

(e) The DC Government.

(f) Mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

§ 102–36.30 Maximize use of excess personal property.

Using excess personal property to the maximum extent practicable maximizes the return on Government dollars spent and minimizes expenditures for new procurement. Before purchasing new property, check with GSA for available excess personal property that may be suitable for your needs. You must use excess personal property unless it would cause serious hardship, be impractical, or impair your operations.

§ 102–36.35 Considerations.

Consider the following when acquiring excess personal property:

(a) There must be an authorized requirement.

(b) The cost of acquiring and maintaining the excess personal property (including packing, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new material.

(c) The sources of spare parts or repair/maintenance services to support the acquired item are readily accessible.

(d) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(e) The excess personal property will fulfill the required need with reasonable

certainty without sacrificing mission or schedule.

(f) You must not acquire excess personal property with the intent to sell or trade for other assets.

§ 102–36.40 Excess personal property transfer costs.

(a) You do not pay for the property, except for the situations listed in paragraph (b) of this section. However, you are responsible for shipping and transportation costs.

(b) You may be required to reimburse the holding agency for excess personal property transferred to you (*i.e.*, transfer with reimbursement) when:

(1) Reimbursement is directed by GSA.

(2) The property was originally acquired with funds not appropriated from the general fund of the U.S. Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue and the holding agency requests reimbursement. It is executive branch policy that working capital fund property shall be transferred without reimbursement.

(3) The property was acquired with appropriated funds, but reimbursement is required or authorized by law.

(4) You or the holding agency is the U.S. Postal Service (USPS).

(5) You are acquiring excess personal property for use by a project grantee that is a public agency or a nonprofit organization and exempt from taxation under 26 U.S.C. 501.

(6) You or the holding agency is the DC Government.

(7) You or the holding agency is a wholly owned or mixed-ownership Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101–9110).

§ 102–36.45 Transfer with reimbursement.

(a) You may be required to reimburse the holding agency for the fair market value when the transfer involves any of the conditions in § 102–36.40(b)(1) through (4).

(b) When acquiring excess personal property for your project grantees (§ 102–36.40(b)(5)), you are required to deposit into the miscellaneous receipts fund of the U.S. Treasury an amount equal to 25% of the original acquisition cost of the property, except for transfers under the conditions cited in § 102–36.105.

(c) When you or the holding agency is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102–36.40(b)(6) or (7)), you are required to reimburse the holding agency using fair value reimbursement. Fair value

reimbursement is 20% of the original acquisition cost for new or unused property, and 0 for other personal property. Where circumstances warrant, a higher fair value may be used if the agencies concerned agree. Due to special circumstances or the unusual nature of the property, the holding agency may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to GSA.

§ 102–36.50 Excess personal property screening period.

The screening period starts when GSA receives the report of excess personal property. GSA determines the duration of the screening period. GSA may adjust the screening period in coordination with the holding agency.

§ 102–36.55 Agency responsibilities in transfer order processing.

Whether the excess is for your use or for use by a non-Federal recipient that you sponsor, you must:

- (a) Ensure that only authorized Federal officials of your agency sign the Standard Form (SF) 122 prior to submission to GSA for approval.
- (b) Ensure that excess personal property approved for transfer is used for authorized official purpose(s).
- (c) Advise GSA of names of agency officials that are authorized to approve SF 122s and notify GSA of any changes in signatory authority.

§ 102–36.60 Excess personal property removal.

Normally, you have 10 days from the date the transfer order is completely approved to pick up the excess personal property for transfer. You are responsible for scheduling and coordinating the property removal with the holding agency and requesting additional time, if needed.

§ 102–36.65 Direct transfers.

You may obtain excess personal property directly from another Federal agency without GSA approval if it has not yet been reported to GSA. If the total acquisition cost does not exceed \$10,000 per line item, you must complete an SF 122 and ensure it is signed by an authorized official of your agency. If the total acquisition cost exceeds \$10,000 per line item, you must first receive approval from GSA, annotate the SF 122 with the name of the GSA approving official, and the date of the verbal approval. You must provide a copy of the completed SF 122 to GSA under both scenarios within 10 workdays from the date of transaction. Additionally, you are subject to the requirement to pay reimbursement for

the excess personal property under a direct transfer when any of the conditions in § 102–36.40(b) apply.

Subpart C—Acquiring Excess Personal Property for Non-Federal Recipients

§ 102–36.70 Acquiring excess personal property for non-Federal activities.

You may acquire and furnish excess personal property for use by your nonappropriated fund activities, contractors, cooperatives, and project grantees, and other eligible recipients when you have specific statutory authority to do so.

§ 102–36.75 Responsibilities when acquiring excess personal property for use by a non-Federal recipient.

Your authorized agency official must:

- (a) Ensure the use of excess personal property by the non-Federal recipient is authorized and complies with applicable Federal regulations and agency guidelines.
- (b) Determine that the use of excess personal property will reduce the costs to the Government and/or that it is in the Government's best interest to furnish excess personal property.
- (c) Review and approve transfer documents for excess personal property as the sponsoring Federal agency.
- (d) Ensure the non-Federal recipient is aware of the non-Federal recipient's obligations under this chapter and your agency regulations regarding the management of excess personal property.
- (e) Ensure the non-Federal recipient does not stockpile the property and places it into use within a reasonable period, and has a system to prevent nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished.
- (f) Establish provisions and procedures for property accountability and disposition in situations when the Government retains title.
- (g) Report annually to GSA excess personal property furnished to non-Federal recipients during the year (40 U.S.C. 529).

§ 102–36.80 Nonappropriated fund activity and title retention.

Title to excess personal property furnished to a nonappropriated fund activity remains with the Federal Government. You are accountable for establishing controls over the use of such excess property in accordance with § 102–36.10(d). When such property is no longer required by the nonappropriated fund activity, you must reuse or dispose of the property in accordance with this part.

§ 102–36.85 Transfers of personal property owned by a nonappropriated fund activity.

Property purchased by a nonappropriated fund activity is not Federal property. A nonappropriated fund activity has the option of making its privately owned personal property available for transfer to a Federal agency, usually with reimbursement. If such reimbursable personal property is not transferred to another Federal agency, it may be offered for sale. Such property is not available for donation.

§ 102–36.90 Contractor restrictions.

You may acquire and furnish excess personal property for use by your contractors subject to the criteria and restrictions in the Federal Acquisition Regulation (48 CFR part 45). When such property is no longer needed by your contractors or your agency, you must dispose of the excess personal property in accordance with the provisions of this part.

§ 102–36.95 Cooperative limitations.

You must limit the total original acquisition cost of property transfers to the dollar value of the cooperative agreement. For any transfers more than such amount, you must ensure that an official of your agency at a level higher than the officer administering the agreement approves the transfer. The Federal Government retains title to such property, except when provided by specific statutory authority.

§ 102–36.100 Grantee requirements.

You may furnish excess personal property for use by your grantees if:

- (a) The grantee holds a federally sponsored project grant;
- (b) The grantee is a public agency or a nonprofit tax-exempt organization under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);
- (c) The property is for use in connection with the grant; and
- (d) You pay 25% of the original acquisition cost and deposit the funds into the miscellaneous receipts fund of the U.S. Treasury. Title vests in the grantee after funds are deposited. Exceptions are listed in § 102–36.105.

§ 102–36.105 Fee when furnishing excess personal property to project grantees.

You may acquire excess personal property for use by a project grantee without paying the 25% fee when any of the following conditions apply:

- (a) The personal property was originally acquired from excess sources by your agency and has been placed into official use by your agency for at least one year. The Federal Government retains title to such property.

(b) The property is furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative State forest fire control programs. The Federal Government retains title to such property.

(c) The property is furnished by the U.S. Department of Agriculture to State or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E). The Federal Government retains title to such property.

(d) The property is not needed for donation under part 102–37 of this subchapter and is transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358). Title to such property transfers to the grantee.

(e) The property is scientific equipment transferred under section 11(e) of the National Science Foundation (NSF) Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will limit such transfers to property within Federal Supply Classification (FSC) groups 12, 14, 43, 48, 58, 59, 65, 66, 67, 68 and 70. GSA may approve transfers without reimbursement for property under other FSC groups when NSF certifies the item is a component of or related to a piece of scientific equipment or is a difficult-to-acquire item needed for scientific research. Regardless of FSC, GSA will not approve transfers of common-use or general-purpose items without reimbursement. Title to such property transfers to the grantee.

(f) The property is furnished in connection with grants to Indian Tribes, as defined in section 3(c) of the Indian Financing Act (24 U.S.C. 1452(c)). Title passage is determined under the authorities of the administering agency.

§ 102–36.110 Type of excess personal property furnished to project grantees.

You may furnish to your project grantees any property, except for consumable items, determined to be necessary and usable for the purpose of the grant. Consumable items are generally not transferable to project grantees. GSA may approve transfers of excess consumable items when adequate justification for the transfer accompanies such requests. For this section, “consumable items” are items which are intended for one-time use and are actually consumed in that one time.

§ 102–36.115 Excess personal property for cannibalization purposes by grantees.

Subject to GSA approval, you may acquire excess personal property for

cannibalization purposes. You may be required to provide a supporting statement that indicates disassembly of the item for secondary use has greater benefit than utilization of the item in its existing form and will result in cost savings to the Government.

§ 102–36.120 Limit on excess personal property furnished to grantees.

You must monitor transfers of excess personal property so the total original acquisition cost of property transferred does not exceed the dollar value of the grant. Any transfers above the grant amount must be approved by an official at an administrative level higher than the officer administering the grant.

Subpart D—Disposition of Excess Personal Property

§ 102–36.125 Reporting requirements and exceptions.

(a) Report all excess personal property to GSA on SF 120, regardless of the condition code, except as authorized in § 102–36.65 for direct transfers or as exempted in paragraph (b) of this section. Report all excess personal property, including excess personal property to which the Government holds title but is in the custody of your contractors, cooperatives, or project grantees.

(b) You are not required to report the following types of excess personal property to GSA for screening:

- (1) Property determined appropriate for abandonment/destruction.
- (2) Nonappropriated fund property.
- (3) Foreign excess personal property.
- (4) Scrap, except aircraft in scrap condition.
- (5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.
- (6) Trading stamps and bonus goods.
- (7) Hazardous waste.
- (8) Controlled substances.
- (9) Nuclear Regulatory Commission-controlled materials.
- (10) Property dangerous to public health and safety.
- (11) Classified items or property determined to be sensitive for reasons of national security.

§ 102–36.130 Accountability.

You are accountable for the excess personal property until the time it is picked up by the designated recipient or its agent. You are responsible for all care and handling charges while the excess personal property is going through the screening and disposal process.

§ 102–36.135 Physical custody.

Generally, you retain physical custody of the excess personal property prior to its final disposition.

§ 102–36.140 Competing requests.

(a) GSA will generally approve transfers on a first-come, first-served basis. When more than one Federal agency requests the same item and the quantity available is not sufficient to meet the demand of all interested agencies, GSA will consider factors such as national defense requirements, emergency needs, avoiding the necessity of a new procurement, energy conservation, transportation costs, and retention of title in the Government. GSA will normally give preference to the agency that will retain title in the Government.

(b) Requests for property for the purpose of cannibalization will normally be subordinate to requests for use of the property in its existing form.

§ 102–36.145 Disposal of excess personal property without GSA approval.

You cannot dispose of excess personal property without GSA approval except under the following limited situations:

- (a) Direct transfer procedures.
- (b) Excess personal property not required to be reported to GSA.
- (c) When such disposal is otherwise authorized by law.

§ 102–36.150 Disposal process withdrawal.

You may withdraw excess personal property from the disposal process to satisfy an internal agency requirement. Property that has been requested or approved for transfer, donation, or offered for sale by GSA may be returned to your control with proper justification and GSA approval. GSA will only grant such requests prior to the sales award, since an award is binding.

§ 102–36.155 Reimbursement conditions.

(a) You may require and retain reimbursement for the excess personal property from the recipient when:

- (1) Your agency has the statutory authority to require and retain reimbursement for the property;
 - (2) You had originally acquired the property with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue. It is current executive branch policy that working capital fund property shall be transferred without reimbursement;
 - (3) You or the recipient is the U.S. Postal Service;
 - (4) You or the recipient is the DC Government; or
 - (5) You or the recipient is a wholly owned or mixed-ownership Government corporation.
- (b) You may charge for direct costs you incurred incident to the transfer,

such as packing, loading and shipping of the property. The recipient is responsible for such charges unless you waive the amount involved.

(c) You may not charge for overhead or administrative expenses or the costs for care and handling of the property pending disposition.

§ 102–36.160 Reimbursement amount.

(a) You may require reimbursement in an amount up to the fair market value of the property when the transfer involves property meeting conditions in § 102–36.155(a)(1) and (2).

(b) When you or the recipient is the DC Government or a wholly owned or mixed-ownership Government corporation, you may only require fair value reimbursement. Fair value reimbursement is 20% of the original acquisition cost for new or unused property, and 0 for other personal property. A higher fair value may be used if you and the recipient agency agree. Due to special circumstances or the nature of the property, you may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to GSA.

§ 102–36.165 Abandonment/destruction.

You may abandon or destroy excess personal property when an authorized

official of your agency has made a written determination that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. It must be approved by a reviewing official who is not directly accountable for the property. An item has no commercial value when it has neither utility nor monetary value as an item or scrap.

§ 102–36.170 Abandonment/destruction authority restrictions.

You must not abandon or destroy property in a manner which is detrimental or dangerous to public health, public safety, or national security. If you become aware of an interest from an entity in purchasing the property, you must implement sales procedures in lieu of abandonment/destruction. In lieu of abandonment/destruction, you may donate such excess personal property only to a public body without going through GSA. If you become aware of an interest from an eligible non-profit organization that is not a public body in acquiring the property, you must contact GSA and implement donation procedures in accordance with part 102–37 of this subchapter.

Subpart E—Personal Property Whose Disposal Requires Special Handling

§ 102–36.175 Excess aircraft disposal.

(a) You must report to GSA all excess aircraft, regardless of condition or dollar value, and provide the following information on the SF 120:

- (1) Manufacturer, date of manufacture, model, serial number.
- (2) Major components missing from the aircraft, such as engines, electronics.
- (3) Whether or not the:
 - (i) Aircraft is operational;
 - (ii) Data plate is available;
 - (iii) Historical and maintenance records are available;
 - (iv) Aircraft has been previously certificated by the Federal Aviation Administration (FAA) and/or has been maintained to FAA airworthiness standards; and
 - (v) Aircraft was previously used for non-flight purposes and has been subjected to extensive disassembly and reassembly procedures for ground training, or repeated burning for fire-fighting training purposes.
- (4) For military aircraft, indicate Category A, B, or C as designated by the Department of Defense (DoD), as follows:

Table 1 to Paragraph (a)(4)

Category of aircraft	Description
A	Aircraft authorized for sale and exchange for commercial use.
B	Aircraft previously used for ground instruction and/or static display.
C	Aircraft that are combat configured as determined by DoD.

(b) When the designated transfer or donation recipient's intended use is for non-flight purposes, you must remove and return the data plate to GSA prior to releasing the aircraft to the authorized recipient. GSA will forward the data plates to the FAA.

§ 102–36.180 Excess Flight Safety Critical Aircraft Parts (FSCAP) disposal.

You may dispose of excess FSCAP if you determine that adequate documentation is available to allow transfer, donation, or sale of the part in accordance with part 102–33 of this subchapter. Otherwise, you must

mutilate undocumented FSCAP that has no traceability to its original equipment manufacturer and dispose of it as scrap. When reporting excess FSCAP, annotate the manufacturer, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120. Ensure all available historical and maintenance records accompany the part at the time of issue.

§ 102–36.185 FSCAP identification.

Any aircraft part designated as FSCAP is assigned an alpha Criticality Code, and the code is annotated on the original transfer document when you

acquire the part. You must perpetuate the appropriate FSCAP Criticality Code on all personal property records. You may contact the Federal agency or military service that originally owned the part for assistance in making this determination, or query DoD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) for the part.

§ 102–36.190 FSCAP Criticality Codes.

Table 1 to § 102–36.190

FSCAP code	Description
E	FSCAP specially designed to be or selected as being nuclear hardened.
F	FSCAP.

§ 102–36.195 Disposing of life-limited aircraft parts without an FSCAP designation.

You must ensure that tags and labels, historical data, and maintenance records accompany the part on any transfers, donations, or sales. Refer to part 102–33 of this subchapter for additional information.

§ 102–36.200 Special requirements for disaster relief.

Upon declaration by the President of an emergency or a major disaster, you may loan excess personal property to State and local governments, with or without compensation and prior to reporting it as excess to GSA, to alleviate suffering and damage resulting from any emergency or major disaster (Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121–5206) and Executive Order 12148 (3 CFR, 1979 Comp., p. 412), as amended). If the loan involves property that has already been reported excess to GSA, you may withdraw the item from the disposal process subject to approval by GSA. You may also withdraw excess personal property for use by your agency in providing assistance in disaster relief. You are still accountable for this property and your agency is responsible for developing agencywide procedures for recovery of such property.

§ 102–36.205 Excess firearms disposal.

Unless you have specific statutory authority to do otherwise, excess firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Firearms not transferred must be destroyed and sold as scrap. For additional guidance on the disposition of firearms refer to part 102–40 of this subchapter.

§ 102–36.210 Agency responsibilities in foreign excess personal property disposal.

(a) Determine whether it is in the interest of the U.S. Government to return foreign excess personal property to the U.S. for further re-use or to dispose of the property overseas.

(b) Ensure that any disposal of property overseas conforms to the foreign policy of the U.S. and the terms and conditions of any applicable Host Nation Agreement.

(c) Ensure that, when foreign excess personal property is donated or sold overseas, donation/sales conditions include a requirement for compliance with U.S. Department of Commerce and Department of Agriculture regulations, contained in titles 15 and 7 of the CFR, respectively, when transporting any personal property back to the U.S.

(d) Inform the U.S. State Department of any disposal of property to any foreign governments or entities (as defined in § 102–42.10 of this subchapter).

§ 102–36.215 Foreign excess personal property disposal options.

(a) Offer the property for re-use by U.S. Federal agencies overseas;

(b) Return the property to the U.S. for re-use by eligible recipients;

(c) Sell, exchange, lease, or transfer such property for cash, credit, or other property;

(d) Donate medical materials or supplies to nonprofit medical or health organizations, including those qualified under sections 214(b) and 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2174, 2357); or

(e) Abandon, destroy, or donate such property when you determine that it has no commercial value or the estimated cost of care and handling would exceed the estimated proceeds from its sale, in accordance with 40 U.S.C. 527. Abandonment, destruction, or donation actions must also comply with the laws of the country in which the property is located.

§ 102–36.220 GSA assistance in foreign excess personal property disposal.

You may request GSA's assistance in the screening of foreign excess personal property for possible re-use by eligible recipients within the U.S. GSA may, after consultation with you, designate property for return to the U.S. for transfer or donation purposes.

§ 102–36.225 Foreign excess personal property transportation costs.

When foreign excess property is to be returned to the U.S. for the purpose of an approved transfer or donation under the provisions of 40 U.S.C. 521–529, 549, and 551, the Federal agency, State agency, or donee receiving the property is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

§ 102–36.230 Gift disposal.

If your agency has gift retention authority, you may retain gifts from the public. Otherwise, you must report gifts you receive on an SF 120 to GSA.

§ 102–36.235 Money or intangible personal property disposal.

Report intangible personal property to GSA. You must not transfer or dispose of this property without prior approval of GSA. Per 31 U.S.C. 324, the Secretary of the Treasury will dispose of money and negotiable instruments such as bonds, notes, or other securities.

§ 102–36.240 Gift disposal other than intangible personal property.

(a) Report the gift to GSA when it is offered with the condition that the property be sold and the proceeds used to reduce the public debt.

(b) You may use the gift for an authorized official purpose without reporting it to GSA when it is offered with no conditions or restrictions and your agency has gift retention authority. The property will then lose its identity as a gift and you must account for it in the same manner as Federal personal property acquired from authorized sources. You must report the property to GSA as excess when it is no longer needed.

(c) You must report the gift to GSA when the gift is offered with no conditions or restrictions and your agency does not have gift retention authority. GSA will offer the property for screening for possible transfer to a Federal agency or convert the gift to money and deposit the funds with the U.S. Treasury as miscellaneous receipts.

If your agency is interested in keeping the gift for an official purpose, you must annotate your interest on the SF 120 and submit an SF 122.

§ 102–36.245 Excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs).

You may dispose of excess MLIs/CCLIs only when you comply with the additional disposal and demilitarization (DEMIL) requirements contained in part 102–40 of this subchapter. MLIs may require demilitarization when issued to any non-DoD entity and will require appropriate licensing when exported from the U.S. CCLIs may require export licensing when transported from the U.S.

§ 102–36.250 Identifying DEMIL requirements.

You identify MLIs/CCLIs requiring DEMIL by the DEMIL code that is assigned to each MLI or CCLI. The code indicates the type and scope of DEMIL and/or export controls that must be accomplished, when required, before issue to any non-DoD activity. Refer to DoD Demilitarization and Trade Security Control Manual, DoD 4160.21–M–1 for additional guidance.

§ 102–36.255 Excess shelf-life items.

(a) When there are quantities on hand that would not be utilized by the expiration date and cannot be returned to the vendor for credit, you must report such expected overage as excess for possible transfer and disposal to ensure maximum use prior to deterioration.

(b) You need not report expired shelf-life items. You may dispose of property with expired shelf-life by abandonment/destruction in compliance with Federal, State, and local waste disposal and air and water pollution control standards.

§ 102–36.260 Excess medical shelf-life items held for national emergency purposes.

When the remaining shelf-life of any medical materials or supplies held for national emergency purposes is of too short a period to justify their continued retention, you should report such property excess for possible transfer and disposal. You must make such excess determinations at such time as to ensure that sufficient time remains to permit their use before their shelf-life expires and the items are unfit for human use.

§ 102–36.265 Transferring or exchanging excess medical shelf-life items with other Federal agencies.

You may transfer or exchange excess medical shelf-life items held for national emergency purposes with any other Federal agency for other medical

materials or supplies, without GSA approval and without regard to part 102–39 of this subchapter. You and the transferee agency will agree to the terms and prices. You may credit any proceeds derived from such transactions to your agency's current applicable appropriation and use the funds only for the purchase of medical materials or supplies for national emergency purposes.

§ 102–36.270 Excess vessels.

(a) When you dispose of excess vessels, you must indicate on the SF 120 the following information:

(1) Whether the vessel has been inspected by the U.S. Coast Guard.
(2) Whether testing for hazardous materials has been done. And if so, the result of the testing, specifically the presence or absence of polychlorinated biphenyls (PCBs) and asbestos and level of contamination.

(3) Whether hazardous materials clean-up is required, and when it will be accomplished by your agency.

(b) In accordance with 40 U.S.C. 548, the Federal Maritime Administration (FMA), Department of Transportation, is responsible for disposing of surplus vessels determined to be merchant vessels or capable of conversion to merchant use and weighing 1,500 gross tons or more. The SF 120 for such vessels shall be forwarded to GSA for submission to FMA.

(c) Disposal instructions regarding vessels in this part do not apply to battleships, cruisers, aircraft carriers, destroyers, or submarines.

§ 102–36.275 Excess hazardous personal property.

When reporting excess hazardous personal property to GSA, certify that the property has been packaged and labeled as required. Annotate any special requirements for handling, storage, or use, and provide a description of the actual or potential hazard. Refer to part 102–40 of this subchapter for additional guidance on the disposition of excess hazardous personal property.

■ 7. Revise part 102–37 to read as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

- 102–37.5 Scope.
- 102–37.10 Surplus property available for donation.
- 102–37.15 Donation screening timeframe.
- 102–37.20 Requesting surplus property for donation.
- 102–37.25 Transportation and other costs.

102–37.30 Property removal timeframe.

Subpart B—GSA

- 102–37.35 GSA's responsibilities.
- 102–37.40 Competing transfer requests.
- 102–37.45 Allocation factors.

Subpart C—Holding Agency

- 102–37.50 Holding agency responsibilities.
- 102–37.55 Holding agency costs reimbursement.

Subpart D—SASP

- 102–37.60 SASP responsibilities.
- 102–37.65 SASP eligibility.
- 102–37.70 State plan of operation.
- 102–37.75 State plan requirements.
- 102–37.80 State plan effective date.
- 102–37.85 State plan amendments or modifications.
- 102–37.90 State plan nonconformance.
- 102–37.95 Property available for donation.
- 102–37.100 Authorized screener records.
- 102–37.105 Surplus property requests.
- 102–37.110 SASP certifications.
- 102–37.115 SASP agreements.
- 102–37.120 Additional certifications.
- 102–37.125 Written justification for special types of surplus property.
- 102–37.130 Surplus aircraft and vessel documentation.
- 102–37.135 Letter of intent requirements.
- 102–37.140 Surplus property for cannibalization.
- 102–37.145 Surplus property safeguards.
- 102–37.150 Surplus property damage or loss.
- 102–37.155 Surplus property insurance.
- 102–37.160 Distribution documentation.
- 102–37.165 Surplus property distribution to eligible donees of another State.
- 102–37.170 Retention of surplus property for SASP use.
- 102–37.175 Service charge payments.
- 102–37.180 Use of service charge funds.
- 102–37.185 Non-SASP State activities and programs.
- 102–37.190 Undistributed surplus property.
- 102–37.195 Transfers between SASPs.
- 102–37.200 Reporting unneeded, usable property for disposal.
- 102–37.205 GSA's agent in undistributed surplus property sales.
- 102–37.210 Undistributed surplus property proposal to sell.
- 102–37.215 Recovering costs of undistributed surplus property.
- 102–37.220 Abandonment or destruction of undistributed surplus property.
- 102–37.225 Cooperative agreement purposes.
- 102–37.230 Costs related to providing support under a cooperative agreement.
- 102–37.235 Cooperative agreements between SASPs.
- 102–37.240 Cooperative agreement termination.
- 102–37.245 SASP audits.
- 102–37.250 Federal reviews of SASPs.
- 102–37.255 SASP responsibility in donee audit compliance.
- 102–37.260 SASP reports to GSA.
- 102–37.265 SASP liquidation plan.
- 102–37.270 Public notice of liquidation plans.

Subpart E—Donations to Public Agencies, SEAs, and Eligible Nonprofit Organizations

- 102–37.275 Statutory authority for donations of surplus property under this subpart.
- 102–37.280 Eligibility determinations.
- 102–37.285 Eligibility criteria.
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- 102–37.325 Property available for donation to donees with conditional eligibility.
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- 102–37.360 Modification or release of terms and conditions.
- 102–37.365 Release of restrictions on property authorized for cannibalization.
- 102–37.370 Release of restrictions on property considered for exchange.
- 102–37.375 Utilization reviews.
- 102–37.380 Noncompliance actions with donation terms and conditions.
- 102–37.385 SASP coordination with GSA.
- 102–37.390 Compliance actions funds.
- 102–37.395 Unneeded property reimbursement.
- 102–37.400 Donation requirements to SEAs.
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Subpart F—Donations to Public Airports

- 102–37.410 Public airport donation authority.
- 102–37.415 Priority consideration.
- 102–37.420 FAA's responsibilities.
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Subpart G—Donations to Public Bodies in Lieu of Abandonment/Destruction

- 102–37.430 Authority for donations to public bodies.
- 102–37.435 Type of property a holding agency may donate under this subpart.
- 102–37.440 Costs associated with the donation.

Subpart H—Transfer of Vehicle Title to a Donee

- 102–37.445 Responsibilities.
- 102–37.450 Vehicle title transfer.

Authority: 40 U.S.C. 549 and 121(c).

Subpart A—General Provisions**§ 102–37.5 Scope.**

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. You must comply with this part if you are a holding agency or a recipient of Federal surplus personal property approved by the General Services Administration (GSA) for donation. “You” means the holding agency in subpart C of this part. “You” means a State Agency for Surplus Property (SASP) in subparts D and E of this part, unless otherwise specified.

§ 102–37.10 Surplus property 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) Nonappropriated 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.

§ 102–37.15 Donation screening timeframe.

Authorized entities may screen property concurrently with Federal agencies. See § 102–36.60 of this subchapter.

§ 102–37.20 Requesting surplus property for donation.

(a) Donees should submit their requests for property directly to the appropriate SASP.

(b) SASPs and public airports should submit their requests to GSA. Requests must be submitted on Standard Form (SF) 123. The Federal Aviation Administration (FAA) must approve public airport transfer requests. 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 when obtaining property under the authority of 40 U.S.C. 551.

(d) Public bodies, when seeking to acquire property that is being abandoned or destroyed, should follow rules and procedures established by the donor agency.

§ 102–37.25 Transportation and other costs.

The transferee is responsible for any packing, shipping, or transportation charges associated with the transfer of surplus property for donation. Those costs may be passed on to donees that receive the property.

§ 102–37.30 Property removal timeframe.

The transferee or 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. The transferee must notify GSA if it no longer needs the property.

Subpart B—GSA**§ 102–37.35 GSA's responsibilities.**

(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 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 FAA (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;

(f) Approves, after consultation with the holding agency, foreign excess personal property to be returned to the United States (U.S.) for donation purposes;

(g) Imposes appropriate conditions on the donation of surplus property having characteristics that require special handling or use limitations (see § 102–37.350); and

(h) Keeps track of and reports on Federal donation programs.

§ 102–37.40 Competing transfer requests.

In case of requests from two or more SASPs, GSA will use the allocation factors in § 102–37.45. 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.

§ 102–37.45 Allocation 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 (SEA).

(c) Need and usability of property. GSA will also give special consideration to requests transmitted through the SASPs by donees for specific items. Requests for property to be used “as is” will be given preference over cannibalization requests.

(d) Whether a SASP has already received similar property in the past, and how much.

(e) 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.

(f) The property’s condition and its original acquisition cost.

(g) Relative neediness of each State based on the State’s population and per capita income.

Subpart C—Holding Agency

§ 102–37.50 Holding agency responsibilities.

(a) Advise GSA if you have a donee in mind for foreign gift items or airport property;

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

(c) Set aside or hold surplus property from further disposal upon notification of a pending transfer for donation. If GSA does not notify you of a pending transfer within 5 calendar days following the surplus release date, you may proceed with the sale or other authorized disposal of the property;

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

(e) Notify GSA 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 § 102–37.55.

§ 102–37.55 Holding agency costs reimbursement.

You may charge the transferee for the direct costs you incurred incident to a donation transfer, such as your packing, handling, crating, and transportation expenses. You may not include overhead or administrative costs.

Subpart D—SASP

§ 102–37.60 SASP responsibilities.

(a) Determine if an entity seeking to obtain surplus property is an eligible entity per § 102–37.275 or other approved entity.

(b) Distribute surplus property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, 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.

§ 102–37.65 SASP eligibility.

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 §§ 102–37.110 and 102–37.115.

§ 102–37.70 State plan of operation.

A State plan of operation is a document that sets forth a plan for the management and administration of the SASP in the donation of property. The state legislature must develop the plan. The chief executive officer of the State must submit the plan to the GSA Administrator 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 required by 40 U.S.C. 549(e) and set forth in the plan.

§ 102–37.75 State plan requirements.

The State legislature must ensure the plan conforms to the provisions of 40 U.S.C. 549(e) and includes information and assurances as required by GSA. It may also include in the plan other provisions not inconsistent with the purposes of title 40, U.S. Code, and the requirements of this part.

§ 102–37.80 State plan effective date.

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

§ 102–37.85 State plan amendments or modifications.

GSA must approve amendments or modifications to the plan. 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.

§ 102–37.90 State plan nonconformance.

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.

§ 102–37.95 Property available for donation.

(a) A SASP may conduct onsite screening at various Federal facilities, contact or submit want lists to GSA, or use GSA’s or other agencies’ inventory system to search for property that is potentially available for donation.

(b) To conduct onsite screening, the screener (SASP or SASP’s representative) must coordinate with the individual holding agency or organization. The screener should ascertain the identification required and any special procedures for access to the facility or location.

§ 102–37.100 Authorized screener records.

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. You should place donee screener records in the donee’s eligibility file and review them each time a periodic review of the donee’s file is undertaken.

§ 102–37.105 Surplus property requests.

Generally, you should have a firm requirement or an anticipated demand for any property that you request.

§ 102–37.110 SASP certifications.

You must certify that:

(a) You are the agency of the State designated under State law that has legal authority under 40 U.S.C. 549 and the regulations of this subchapter, 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 an eligible entity per § 102–37.275 or other approved entity.

(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 the regulations of this subchapter, and that the property is usable and needed by the donee.

§ 102–37.115 SASP agreements.

You must agree that:

(a) You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under 40 U.S.C. 549 and the regulations of this subchapter. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by the SASP and/or GSA.

(b) Title to the property remains in the U.S. Government although a donee has 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 U.S. 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 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 § 102–37.235) as an agent and authorized representative of an adjacent State, you will:

(1) Make the certifications and agreements required in § 102–37.110 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 101–4, part 101–6, subpart 101–6.2, and part 101–8, subpart 101–8.3, of this title.

(g) You will not seek to hold the U.S. 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.*).

§ 102–37.120 Additional certifications.

(a) 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 105–74 of this title.

(b) You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all the following conditions apply:

(1) 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;

(2) The cooperative agreement was executed after December 23, 1989; and

(3) The fair market value of the property requested under the cooperative agreement is more than \$100,000.

§ 102–37.125 Written justification for special types of surplus property.

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 § 102–37.350;

(b) Items requested specifically for cannibalization;

(c) Foreign gifts and decorations (as defined in § 102–42.10 of this chapter); and

(d) Any item on which written justification will assist GSA in making allocation to states with the greatest need.

§ 102–37.130 Surplus aircraft and vessel documentation.

(a) For each SF 123 that you submit to GSA for transfer of a surplus aircraft or vessel covered by § 102–37.350, 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; 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 (CTD), signed by you and the intended donee, and containing the special terms and conditions prescribed by GSA.

§ 102–37.135 Letter of intent requirements.

A letter of intent must include:

(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 in its inventory;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often it will be used, 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. 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 supporting the donee's need for the aircraft or vessel.

§ 102–37.140 Surplus property for cannibalization.

The SASP must notify GSA if a donee is requesting property for cannibalization and 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.

§ 102–37.145 Surplus property safeguards.

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.

§ 102–37.150 Surplus property damage or loss.

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 it appears a crime has been committed.

§ 102–37.155 Surplus property insurance.

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.

§ 102–37.160 Distribution documentation.

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 §§ 102–37.340 and 102–37.345; and
- (b) Period of restriction during which the donee must use the property for the purpose for which it was acquired.

§ 102–37.165 Surplus property distribution to eligible donees of another State.

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. An interstate distribution cooperative agreement must be prepared as prescribed in § 102–37.235 and submitted to GSA 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.

§ 102–37.170 Retention of surplus property for SASP use.

You can retain surplus property for use in operating the donation program if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior written GSA approval before using any surplus property in the operation of the SASP. Make your needs known by submitting a list of needed property to GSA 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.

§ 102–37.175 Service charge payments.

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.

§ 102–37.180 Use of 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.

§ 102–37.185 Non-SASP State activities and programs.

Except as provided in § 102–37.390, 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.

§ 102–37.190 Undistributed surplus property.

(a) As soon as it becomes clear that you cannot donate the surplus property, you should first determine whether 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 § 102–37.220.

(2) If you determine that the undistributed surplus property is usable, you should promptly report it to GSA for redispal through retransfer, sale, or other means.

(b) Normally, any property not donated within a 1-year period should be processed in this manner.

§ 102–37.195 Transfers between SASPs.

The requesting SASP must submit an SF 123 to GSA. GSA will respond to the request within 30 calendar days of receipt of the transfer order.

§ 102–37.200 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) Description of each line item of property, 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 § 102–37.215.

§ 102–37.205 GSA's agent in undistributed surplus property sales.

You may act as GSA's agent in selling undistributed surplus property 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.

§ 102–37.210 Undistributed surplus property proposal to sell.

(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, GSA will provide the necessary forms and instructions for you to use in conducting the sale.

§ 102–37.215 Recovering costs of undistributed surplus property.

(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.

(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 the 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% of the total sales proceeds.

§ 102–37.220 Abandonment or destruction of 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 GSA for approval. You must include:

- (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 or the abandonment location;
- (4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health, public safety, or national security, and will not infringe on the rights of other persons; and
- (5) The signature of the SASP director.

(b) GSA will notify you within 30 calendar days of receipt of the request whether you may abandon or destroy the property. GSA will provide alternate disposition instructions if it disapproves your request for abandonment or destruction.

§ 102–37.225 Cooperative agreement purposes.

Section 549(f) of title 40, U.S. Code, allows GSA, or Federal agencies designated by GSA, to enter into cooperative agreements with SASPs to carry out the surplus property donation program. Such agreements allow GSA, or the designated Federal agencies, to use the SASP's property, facilities, personnel, or services or to furnish such resources to the SASP. For example:

(a) GSA, 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.

(b) GSA 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.

§ 102–37.230 Costs related to providing support under a cooperative agreement.

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. Generally, 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 if 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.

§ 102–37.235 Cooperative agreements between SASPs.

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 § 102–37.115(e).

§ 102–37.240 Cooperative agreement termination.

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.

§ 102–37.245 SASP audits.

For each year in which a SASP receives \$1,000,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with 2 CFR part 200. GSA's donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

§ 102–37.250 Federal reviews of SASPs.

Although SASPs are covered under the single audit process in 2 CFR part 200, the Government Accountability Office (GAO), GSA, or other authorized

Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the state of the reasons for a GSA audit. When requested, you must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

§ 102–37.255 SASP responsibility in donee audit compliance.

If a SASP donates \$1,000,000 or more in Federal property to a donee in a fiscal year, it must ensure that the donee has an audit performed in accordance with 2 CFR part 200. If a donee receives less than \$1,000,000 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.

§ 102–37.260 SASP reports to GSA.

(a) *Quarterly report on donations.* Submit GSA Form 3040 by the 25th of the month following the quarter being reported.

(b) *Additional reports.* Make other reports as GSA may require to report to Congress on the status and progress of the donation program.

§ 102–37.265 SASP liquidation plan.

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 SASP 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 SASP'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 SASP's successor in function until continuing obligations on property donated prior to the closing of the SASP are fulfilled.

§ 102–37.270 Public notice of liquidation plans.

A liquidation plan constitutes a major amendment of a SASP's plan of operation and requires public notice.

Subpart E—Donations to Public Agencies, SEAs, and Eligible Nonprofit Organizations

§ 102–37.275 Statutory authority for donations of surplus property under this subpart.

(a) Section 549(d) of title 40, U.S. Code, authorizes surplus property under the control of the DoD to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this part as SEAs).

(b) Section 549(c)(3) of title 40, U.S. Code, authorizes SASPs to donate surplus property to public agencies and to nonprofit educational or public health institutions, such as:

- (1) Medical institutions.
- (2) Hospitals.
- (3) Clinics.
- (4) Health centers.
- (5) Drug abuse or alcohol treatment centers.
- (6) Providers of assistance to homeless individuals.
- (7) Providers of assistance to impoverished families and individuals.
- (8) Schools.
- (9) Colleges.
- (10) Universities.
- (11) Schools for the mentally disabled.
- (12) Schools for the physically disabled.
- (13) Child care centers.
- (14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.
- (15) Museums attended by the public.
- (16) Libraries, serving all residents of a community, district, state or region for free.
- (17) Historic light stations as defined under section 308(e)(2) of the National Historic Preservation Act (16 U.S.C. 470w–7(e)(2)), including a historic light station conveyed under section 308(b), notwithstanding the number of hours that the historic light station is open to the public.

(c) Section 213 of the Older Americans Act of 1965, as amended (42 U.S.C. 3020d), authorizes donations of surplus property to State or local government agencies, or nonprofit organizations or institutions, that receive Federal funding to conduct programs for older individuals.

(d) Section 549(c)(3)(C) of title 40, U.S. Code, authorizes SASPs to donate property to veterans organizations, for purposes of providing services to veterans (as defined in 38 U.S.C. 101). Eligible veterans organizations are those whose:

(1) Membership comprises substantially veterans; and

(2) Representatives are recognized by the Secretary of Veterans Affairs under 18 U.S.C. 5902.

§ 102–37.280 Eligibility determinations.

(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, DoD will determine eligibility to receive surplus property through the SASP as an SEA.

§ 102–37.285 Eligibility criteria.

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 § 102–37.275;

(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.

§ 102–37.290 Approval, accreditation, or licensing requirements determination.

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) For educational activities, letters from three accredited or State-approved

institutions that students from the applicant institution have been and are being accepted.

(e) For 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.

§ 102–37.295 Eligibility records.

In general, you must maintain the records required by your State plan to document donee eligibility. 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.

§ 102–37.300 Eligibility records updates.

You must update donee eligibility records as needed, at least 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, licensing, or certification. You must take particular care to ensure that all records are current relating to the authority of donee representatives to screen and receive property.

§ 102–37.305 Failure to maintain 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, and take any other required compliance actions.

§ 102–37.310 Negative eligibility determination appeals.

If an applicant appeals a negative eligibility determination, forward complete documentation on the appeal request, including your comments and recommendations, to GSA for review. GSA's decision will be final.

§ 102–37.315 Conditional eligibility of donees without approval, accreditation, or licensing.

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. Conditional eligibility may be granted for a limited and reasonable time, not to exceed one year.

§ 102–37.320 Conditional eligibility of not-for-profit organizations pending tax-exempt status.

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.

§ 102–37.325 Property available for donation to donees with conditional eligibility.

You may only make available surplus property that the donee can use immediately. If property is provided to the donee with conditional eligibility, and the conditional eligibility lapses, the property must be returned to the SASP for redistribution or disposal.

§ 102–37.330 Authorized purposes for surplus property.

(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.

§ 102–37.335 Property acquired for exchange.

A donee may not acquire property with the intent to sell or trade it for other assets.

§ 102–37.340 Donee certifications.

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), 40 U.S.C. 122, 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 is not currently debarred, suspended, declared ineligible, or otherwise excluded from receiving the property.

§ 102–37.345 Donee agreements.

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 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 requirements of this part.

(e) It will comply with any conditions imposed by GSA 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.

§ 102–37.350 Special handling conditions or use limitations.

GSA may 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 they were 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.

(b) *Alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of the Justice, to acquire the property. Include the ATF use-permit number on the SF 123.

(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 and property with unsafe or dangerous characteristics.* For hazardous materials and property with unsafe or dangerous characteristics, see part 102–40 of this subchapter.

(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.

§ 102–37.355 Aircraft and vessels special terms and conditions.

(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 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 CTD 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 U.S. Coast Guard documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed CTD 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 CTD 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). The SASP in turn must transmit the records to GSA for forwarding to the FAA.

§ 102–37.360 Modification or release of terms and conditions.

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.

§ 102–37.365 Release of restrictions on property 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.

§ 102–37.370 Release of restrictions on property 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, § 102–37.380 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.

§ 102–37.375 Utilization reviews.

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 to GSA.

§ 102–37.380 Noncompliance actions 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 property donations to any donee under investigation for alleged noncompliance until all investigations have been completed and:

(1) A determination has been made that the allegations are unfounded and the deferment is removed; or

(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 from 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 property no longer suitable, usable, or necessary for donation, by public sale.

§ 102–37.385 SASP coordination with GSA.

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; 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.

§ 102–37.390 Compliance actions funds.

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 U.S. Treasury. You must also submit any supporting documentation indicating the source of the funds and essential background information.

§ 102–37.395 Unneeded property reimbursement.

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 donee requests reimbursement from the SASP for repair expenses;

(b) The SASP recommends a reimbursement amount for GSA approval, taking into consideration the benefit the donee has received from the use of the property and making appropriate deductions for that use;

(c) The property is subsequently transferred to a Federal agency and reimbursement is required as a condition of the transfer or the property is sold for the benefit of the U.S. Government;

(d) No breach of the terms and conditions of donation has occurred; and

(e) GSA authorizes the reimbursement.

§ 102–37.400 Donation requirements to SEAs.

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.

§ 102–37.405 SEA priority for DoD property.

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. DoD must clearly identify the items and justify the request.

Subpart F—Donations to Public Airports

§ 102–37.410 Public airport donation authority.

Section 47151 of title 49, U.S. Code, authorizes executive agencies to give priority consideration to requests from a public airport as defined in 49 U.S.C. 47102 for the donation of surplus property if the Department of Transportation (DOT) considers the property appropriate for airport purposes and GSA approves the donation.

§ 102–37.415 Priority consideration.

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 description of how the airport intends to use the property.

§ 102–37.420 FAA's responsibilities.

(a) Determine the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use;

(b) Set eligibility requirements for public airports and make eligibility determinations;

(c) Certify that property listed on a transfer request is desirable or necessary for public airport use;

(d) Advise GSA of FAA officials authorized to certify transfer requests and notify GSA of any changes in signatory authority;

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

(f) Authorize public airports to visit holding agencies for the purpose of screening and selecting property for transfer, including:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record of screeners operating under FAA authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid screener authorizations.

§ 102–37.425 Administrative information required to GSA.

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 Public Bodies in Lieu of Abandonment/ Destruction

§ 102–37.430 Authority for donations to public bodies.

Pursuant to 40 U.S.C. 527, 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.

§ 102–37.435 Type of property a holding agency may donate under this subpart.

Only property that a holding agency has made a written determination to abandon or destroy may be donated under this subpart.

§ 102–37.440 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, loading, and transportation to its site.

Subpart H—Transfer of Vehicle Title to a Donee

§ 102–37.445 Responsibilities.

(a) The holding agency is responsible for preparing SF 97–1 upon notification by GSA that a donee has been identified. The SF 97–1 may be prepared by GSA if mutually agreed upon by the holding agency and GSA. The holding agency is designated as the “transferor.” If the holding agency authorizes or requires any other entity, including a contractor or grantee, to complete this SF 97–1, the holding agency must first ensure compliance with the Paperwork Reduction Act.

(b) The SASP is responsible for facilitating the transfer of the surplus vehicle to the donee in accordance with this part. The SASP must not sign the SF 97–1 as “transferee” unless the SASP is the donee.

(c) The donee is responsible for processing the SF 97–1 in accordance with state licensing and titling

authorities. The donee signs the SF 97–1 as “transferee” upon receipt of the surplus motor vehicle. The donee is responsible for notifying the SASP if an SF 97–1 is not provided by the Government.

§ 102–37.450 Vehicle title transfer.

Title to the vehicle rests with the holding agency until the SF 97–1 is signed by the donee upon receipt of the surplus motor vehicle. If applicable under the terms of the donation, the title will be conditional until the end of the period of restriction.

■ 8. Revise part 102–38 to read as follows:

PART 102–38—SALE OF PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

102–38.5 Scope.

102–38.10 Conducting sales.

102–38.15 Executive agency responsibilities.

102–38.20 Care and handling costs.

102–38.25 Notification of a Federal requirement.

Subpart B—Sales Process

102–38.30 Sales process.

102–38.35 Sales methods.

102–38.40 Negotiated sales conditions.

102–38.45 Negotiated sales reporting requirements.

102–38.50 Negotiated sales at fixed prices.

102–38.55 Fixed priced sales to State agencies.

102–38.60 Public notice and advertising.

102–38.65 Inspections.

102–38.70 Requirements.

102–38.75 Binding terms and conditions.

Subpart C—Bids

102–38.80 Buyer eligibility.

102–38.85 Sales to Federal employees.

Subpart D—Completion of Sale

102–38.90 Sales contract award recipient.

102–38.95 No award options.

102–38.100 Title transfer requirements.

102–38.105 Sales proceeds retention.

102–38.110 Unused or unauthorized retention of sales proceeds.

Subpart E—Provisions for State and Local Governments

102–38.115 State and local personal property sales.

102–38.120 Personal property advertised for sale withdrawal.

102–38.125 Special provisions for State and local governments regarding negotiated sales.

102–38.130 Applicability of this part to SASPs when conducting sales.

Authority: 40 U.S.C. 121(c); 40 U.S.C. 541 through 548, 571, 573 and 574.

Subpart A—General Provisions

§ 102–38.5 Scope.

This part covers the policies governing the sale of surplus and exchange/sale personal property. Unless otherwise indicated, use of pronouns “we,” “you,” and their variants throughout this part refer to the executive agency responsible for the sale of the property.

§ 102–38.10 Conducting sales.

Only an executive agency designated or authorized by the General Services Administration (GSA) may sell personal property, including on behalf of another agency. Only an authorized contracting officer may execute the sale award documents and bind the United States to the sales contract.

§ 102–38.15 Executive agency responsibilities.

An executive agency's responsibilities in selling personal property are to:

(a) Ensure the sale complies with the provisions of title 40 U.S.C., the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer;

(e) Adjust your property and financial records to reflect the final disposition;

(f) Ensure all sales are made after publicly advertising for bids, except as provided for negotiated sales; and

(g) Ensure advertising for bids permits full and free competition consistent with the value and nature of the property involved.

§ 102–38.20 Care and handling costs.

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee.

§ 102–38.25 Notification of a Federal requirement.

Federal agencies have first claim to excess or surplus personal property reported to GSA. When a bona fide need for the property exists and is expressed by a Federal agency, you or the holding agency must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

Subpart B—Sales Process

§ 102–38.30 Sales process.

You will sell personal property upon such terms and conditions as the head

of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be most advantageous to the Government. When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale as applicable, including:

- (a) Inspection.
- (b) Condition and location of property.
- (c) Eligibility of bidders.
- (d) Consideration of bids.
- (e) Bid deposits and payments.
- (f) Submission of bids.
- (g) Bid price determination.
- (h) Title.
- (i) Delivery, loading, and removal of property.
- (j) Default, returns, or refunds.
- (k) Modifications, withdrawals, or late bids.
- (l) Requirements to comply with applicable laws and regulations.
- (m) Certificate of independent price determinations.
- (n) Covenant against contingent fees.
- (o) Limitation on Government's liability.
- (p) Award of contract.

§ 102–38.35 Sales methods.

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and free competition. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as:

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

§ 102–38.40 Negotiated sales conditions.

You may negotiate sales of personal property when:

- (a) The personal property has an estimated fair market value that does not exceed \$15,000;
- (b) The disposal will be to a state, territory, possession, political subdivision, or tax-supported agency, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or Congress. This authority may be used only with specific lot(s) of property or for categories determined by GSA for a designated period but not more than three months; or

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation.

§ 102–38.45 Negotiated sales reporting requirements.

(a) In advance of the sale, report explanatory statements for each sale by negotiation of any personal property with an estimated fair market value of more than \$15,000 to the GSA oversight committees. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and

(b) Report a listing and description of all negotiated sales of personal property with an estimated fair market value more than \$5,000 to GSA within 60 calendar days after the close of each fiscal year.

§ 102–38.50 Negotiated sales at fixed prices.

You may conduct negotiated sales of personal property at fixed prices (fixed price sale) under this section when:

(a) The items are authorized to be sold at fixed price by GSA, as reflected in GSA Bulletin FMR B–10;

(b) The head of your agency, or designee, determines in writing that such sales serve the best interest of the Government. When you are selling property on behalf of a holding agency, you must consult with the holding agency to determine whether a fixed price sale meets this criterion; and

(c) You must publicize such sales to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You or the holding agency may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102–38.55 Fixed priced sales to State agencies.

Before offering to the public, you may offer the property at fixed prices through the State Agency for Surplus Property (SASP) to any States, territories, possessions, political subdivisions, or tax-supported agencies, which have expressed an interest in obtaining the property.

§ 102–38.60 Public notice and advertising.

(a) You must provide public notice of your sale of personal property to permit full and free competition. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost. Public advertising is considered an announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists.

(b) The public notice must include information necessary for potential buyers to participate in the sale, such as:

- (1) Date, time and location of sale;
- (2) General categories of property being offered for sale;
- (3) Inspection period;
- (4) Method of sale (*i.e.*, spot bid, sealed bid, auction);
- (5) Selling agency; and
- (6) Who to contact for additional information.

§ 102–38.65 Inspections.

You must allow prospective bidders sufficient time to conduct inspections of the personal property to be sold. If physical inspections are prohibited due to agency circumstances, you must notify GSA in writing at least 3 days prior to the start of the screening period. The length of the inspection period depends on whether the inspection is electronic or physical. You should also consider the circumstances of sale; the accessibility of the sales facility; and the volume, type, and location of the property. Normally, you should provide at least 7 calendar days to ensure potential buyers can perform needed inspections.

§ 102–38.70 Requirements.

The offer to sell must include:

- (a) Sale date and time;
- (b) Method of sale;
- (c) Description of property being offered for sale;
- (d) Selling agency;
- (e) Location of property;
- (f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and
 (h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.75 Binding terms and conditions.

Terms and conditions in the offer to sell are normally incorporated into the sales contract and are binding once a bid is accepted.

Subpart C—Bids

§ 102–38.80 Buyer eligibility.

Generally, you may sell Federal personal property to anyone of legal age. You must not enter into a contract with persons or entities debarred or suspended from purchasing Federal property unless your agency head or designee responsible for the disposal action determines there is a compelling reason to do so.

§ 102–38.85 Sales to Federal employees.

You may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. Employees with nonpublic information regarding property offered for sale may not participate in that sale unless allowed by Federal or agency regulations (see 5 CFR 2635.703). For purposes of this section, the term *Federal employee* also applies to an immediate member of the employee's household.

Subpart D—Completion of Sale

§ 102–38.90 Sales contract award recipient.

You will award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid.

§ 102–38.95 No award options.

If no award is made, you may sell the personal property at another sale, or you may abandon or destroy it.

§ 102–38.100 Title transfer requirements.

No specific form or format is designated for transferring title from the Government to the buyer for personal property sold. You must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

§ 102–38.105 Sales proceeds retention.

(a) You may retain that portion of the sales proceeds, in accordance with your agreement with the holding agency,

equal to your direct costs and reasonably related indirect costs incurred in selling personal property.

(b) A holding agency may retain that portion of the sales proceeds equal to its costs of care and handling directly related to the sale of personal property.

(c) After accounting for amounts retained under paragraphs (a) and (b) of this section, a holding agency may retain the balance of proceeds from the sale of its agency's personal property when:

(1) It has the statutory authority to retain all proceeds from sales of personal property;

(2) The property sold was acquired with nonappropriated funds;

(3) The property sold was surplus Government property that was in the custody of a contractor or subcontractor, and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter; or

(5) The property sold was related to waste prevention and recycling programs, under the authority of section 706 of Public Law 115–31. Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.110 Unused or unauthorized retention of sales proceeds.

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.105 must be deposited as miscellaneous receipts in the U.S. Treasury.

Subpart E—Provisions for State and Local Governments

§ 102–38.115 State and local personal property sales.

You may sell Government personal property to State and local governments through:

(a) Competitive sale to the public;

(b) Negotiated sale, through the appropriate SASP; or

(c) Negotiated sale at fixed price through the appropriate SASP. This method of sale can be used prior to a competitive sale to the public.

§ 102–38.120 Personal property advertised for sale withdrawal.

If a SASP wants to buy the personal property advertised for public sale, you are not required to withdraw the item.

§ 102–38.125 Special provisions for State and local governments regarding negotiated sales.

You must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase.

§ 102–38.130 Applicability of this part to SASPs when conducting sales.

SASPs must follow the regulations in this part when conducting sales of Government personal property in their custody on behalf of GSA.

■ 9. Revise part 102–39 to read as follows:

PART 102–39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Subpart A—General

Sec.

102–39.5 Scope.

Subpart B—Exchange/Sale Provisions

102–39.10 Determinations.

102–39.15 When to offer exchange/sale property to Federal agencies and State Agencies for Surplus Property (SASPs).

102–39.20 Restrictions and prohibitions.

102–39.25 Conditions.

102–39.30 Accounting requirements.

Authority: 40 U.S.C. 121(c); 40 U.S.C. 503.

Subpart A—General

§ 102–39.5 Scope.

This part covers the exchange/sale authority and applies to all personal property owned by executive agencies worldwide. Use of “you” throughout this part refers to executive agencies.

Subpart B—Exchange/Sale Provisions

§ 102–39.10 Determinations.

Consider using the exchange/sale authority when replacing personal property. Determine whether an exchange or sale will provide a greater return for the Government.

§ 102–39.15 When to offer exchange/sale property to Federal agencies and State Agencies for Surplus Property (SASPs).

You should first solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

(1) Do so under terms mutually agreeable to you and the recipient;

(2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and

(3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

(b) SASPs known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

§ 102–39.20 Restrictions and prohibitions.

You should not use the exchange/sale authority if the exchange allowance or estimated sales proceeds for the property will be unreasonably low. You must not use the exchange/sale authority for:

(a)(1) The following Federal Supply Classification (FSC) groups of personal property:

(i) 10 Weapons. (This restriction/prohibition does not apply to Class 1005 weapons when conducting exchange/sales with the original equipment manufacturer.)

(ii) 11 Nuclear ordnance.

(iii) 44 Furnace, Steam Plant, and Drying Equipment; and Nuclear Reactors (FSC Class 4470, Nuclear Reactors only).

(iv) 68 Chemical and chemical products.

(v) 84 Clothing, individual equipment, and insignia.

(2) Deviations under paragraph (a)(1) of this section are not required for Department of Defense (DoD) property in any FSC Group when the applicable DoD demilitarization requirements, and any other applicable regulations and statutes, are met.

(b) Materials in the National Defense Stockpile (50 U.S.C. 98–98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(c) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of part 102–40 of this subchapter.

(d) Controlled substances, unless you meet the requirements of part 102–40 of this subchapter.

(e) Property with a condition code of scrap except:

(1) Property that had utility and value at the point in time when a determination was made to use the exchange/sale authority; or

(2) Property that was otherwise eligible for exchange/sale but was coded as scrap due to damage.

(f) Property that was originally acquired as excess, forfeited property, or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(g) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Defense Logistics Agency Disposition Services.

(i) Flight Safety Critical Aircraft Parts (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of part 102–33 of this subchapter.

(j) Vessels subject to 40 U.S.C. 548.

(k) Aircraft and aircraft parts, unless there is full compliance with all exchange/sale provisions in part 102–33 of this subchapter.

§ 102–39.25 Conditions.

You may use the exchange/sale authority if:

(a) The property exchanged or sold is similar to the property acquired;

(b) The property exchanged or sold is not excess or surplus and you have a continuing need for similar property;

(c) The property exchanged or sold was not acquired for the principal purpose of exchange or sale;

(d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and

(e) When replacing personal property by sale, you must use the methods, terms, and conditions of sale, and the forms prescribed in part 102–38 of this subchapter.

§ 102–39.30 Accounting requirements.

Exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was exchanged or sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts. Deviations will not be granted for this section.

■ 10. Revise part 102–40 to read as follows:

PART 102–40—UTILIZATION AND DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Subpart A—General Provisions

Sec.

102–40.5 Scope.

Subpart B—Responsibilities

102–40.10 Personal property requiring special handling.

102–40.15 Disposal.

102–40.20 Reporting restrictions.

102–40.25 Care and handling.

Subpart C—Transfer and Donation of Personal Property With Special Handling Requirements

102–40.30 Transfer and donation.

102–40.35 Donation requirements.

102–40.40 Transfer costs.

Subpart D—Sale of Personal Property With Special Handling Requirements

102–40.45 Sales.

102–40.50 Terms and conditions.

102–40.55 Abandonment or destruction.

Subpart E—Additional Requirements

102–40.60 Ammunition and ammunition components.

102–40.65 Controlled substances.

102–40.70 Drugs, biologicals, and reagents other than controlled substances.

102–40.75 Firearms.

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

Subpart A—General Provisions

§ 102–40.5 Scope.

(a) This part provides guidance regarding the utilization, transfer, donation, sale, and other disposal of Government personal property with special handling requirements.

(b) Pursuant to 40 U.S.C. 549(b)(1), State Agencies for Surplus property (SASPs) must comply with the provisions of this part related to the donation of surplus property with special handling requirements.

(c) The pronouns “we,” “you,” and their variants throughout this part refer to the executive agency, or other entity using this part, unless otherwise indicated.

Subpart B—Responsibilities

§ 102–40.10 Personal property requiring special handling.

Includes property containing hazardous materials, electronics, or property exhibiting dangerous characteristics such that improper use, storage, transportation, or disposal may lead to potential safety, health, environmental, economic, or national security risks. Often, the use, storage,

transportation, or disposal of these items is governed by Federal, State, and local laws and regulations.

§ 102–40.15 Disposal.

You must report excess personal property with special handling requirements to the General Services Administration (GSA) for excess/surplus screening. The report must clearly identify property requiring special handling and all related hazards, precautions, and handling requirements. You must dispose of property not required to be reported to GSA in accordance with applicable Federal, State, and local laws and regulations and your agency procedures.

§ 102–40.20 Reporting restrictions.

You are not required to report to GSA excess personal property with special handling requirements in the following categories:

(a) *Extremely hazardous personal property.* You must dispose of extremely hazardous personal property not reported to GSA in accordance with applicable Federal, State, and local laws and regulations. If circumstances permit, this material may be reported to GSA to optimize use of this already-acquired material. When reporting, at a minimum, you must identify the item and describe the actual or potential hazard(s) associated with the handling, storage, or use of the item(s).

(b) *Hazardous wastes.* You must dispose of hazardous wastes not reported to GSA in accordance with applicable Federal, State, and local laws and regulations.

(c) *Perishables.* You may dispose of perishables with no further utility by abandonment or destruction when it is not detrimental to public health or safety. Perishables that have a longer time before spoilage and are clearly able to be used may be reported to GSA. When reporting perishables, note if there is a specific expiration date and whether such date is an original or extended date.

§ 102–40.25 Care and handling.

The holding agency is responsible for the care and handling of hazardous materials and property requiring special handling until the property has:

- (a) Completed the disposal process; and
- (b) Been transferred, donated, sold, or destroyed. The nature of this material may require extra precautions, processes, or equipment, thereby increasing the cost of care and handling. These costs may be charged to the Federal agency or donation recipient.

Subpart C—Transfer and Donation of Personal Property With Special Handling Requirements

§ 102–40.30 Transfer and donation.

Personal property requiring special handling is generally available for transfer or donation. Surplus personal property identified as hazardous material not required for transfer as excess personal property to Federal agencies should normally be made available for donation.

§ 102–40.35 Donation requirements.

(a) The transfer document must contain a full description of the actual or potential hazards and restrictions associated with the handling, storage, use, transportation or disposal of the item and any continuing restrictions or instructions. GSA will not approve a donation to a SASP unless an eligible donee has been identified.

(b) You are responsible for establishing appropriate safeguards and providing instructions for personal protection to screeners who are inspecting property with special handling requirements.

§ 102–40.40 Transfer costs.

You may charge the recipient any costs you incur in packing, preparing for shipment, and transporting property with special handling requirements.

Subpart D—Sale of Personal Property With Special Handling Requirements

§ 102–40.45 Sales.

You may sell personal property with special handling requirements provided you:

- (a) Comply with applicable Federal, State, and local laws and regulations;
- (b) Follow applicable precautions, such as proper packaging, appropriate labeling with warning signs, and allowing proper safeguards during inspection;
- (c) Advertise and conduct sales of such property separately from other sales;
- (d) Store and display such property in a safe and controlled manner as required; and
- (e) Indicate if the property is being sold only for scrap, and/or if there are any use requirements or restrictions.

§ 102–40.50 Terms and conditions.

When selling personal property with special handling requirements, you must include the following in the sales terms and conditions:

- (a) A full description of the actual or potential hazard(s) associated with handling, storage, or use of the item, as

well as any use requirements, restrictions, or limitations;

(b) A Safety Data Sheet, Material Safety Data Sheet, or Hazardous Materials Identification System code, when applicable;

(c) A certification, executed by a duly authorized agency official, that the item is appropriately labeled and packaged in accordance with applicable regulatory and statutory requirements;

(d) Any additional requirements the purchaser must comply with prior to removal; and

(e) The necessary steps the purchaser must take in the handling and transportation of the property when the property is sold.

§ 102–40.55 Abandonment or destruction.

You may dispose of personal property requiring special handling by abandonment or destruction if you satisfy applicable Federal, State, and local waste disposal and air and water pollution control standards, laws, and regulations. You must ensure that such property, including empty hazardous material containers, is not abandoned until made safe, demilitarized, reduced to scrap, or otherwise made innocuous.

Subpart E—Additional Requirements

§ 102–40.60 Ammunition and ammunition components.

(a) Report usable ammunition to GSA for possible transfer to a Federal agency. You must not donate surplus ammunition. You may donate surplus ammunition components to eligible recipients. You may sell non-expended ammunition and ammunition components (expended and non-expended) only to companies licensed to perform manufacturing/remufacturing processes under the provisions of 18 U.S.C. 923 or other Federal law or regulation or to companies allowed to purchase ammunition components under local and State laws. If the ammunition is regulated by the National Firearms Act (NFA) or any other Federal regulation, the ammunition can only be disposed of in accordance with applicable regulation. Ammunition greater than .50 caliber can, in some instances, be regulated under the NFA. You must follow any demilitarization requirements.

(b) Expended ammunition cartridge cases may also be transferred or donated when the recipient certifies that the spent brass will be reloaded and used only for law enforcement purposes. If there is no Federal or State donation interest in the cases, and a sale of the scrap is not feasible, cartridge cases may

be disposed of using abandonment or destruction procedures. The recipient must certify that the expended cartridge cases will not be used for the original manufactured purpose.

§ 102–40.65 Controlled substances.

(a) You are not required to report excess controlled substances to GSA. If transferred, the recipient agency must certify that it is authorized to procure the controlled substance and provide the registration number on the Certificate of Registration, issued by the Drug Enforcement Administration (DEA) (21 CFR part 1307).

(b) You must not donate controlled substances.

(c) You may only sell controlled substances by sealed bid to bidders registered with the DEA to manufacture, distribute, or dispense the particular controlled substance. DEA registration must be submitted as a condition of sale.

(d) You must not abandon controlled substances. You must destroy controlled substances in such a manner as to ensure total destruction to preclude any further use and ensure such destruction complies with DEA regulations. Destruction must be witnessed and certified by two employees of your agency.

§ 102–40.70 Drugs, biologicals, and reagents other than controlled substances.

Drugs, biologicals, and reagents other than controlled substances—

(a) May be transferred to another Federal agency for official purposes.

(b) Must be clearly identified when they are unfit for human use and destroyed, with destruction performed by an agency employee and witnessed and certified by two additional representatives of your agency.

Destruction of this property held by a SASP or donee must be destroyed by a SASP employee and witnessed by two additional SASP employees.

(c) Donating to a SASP requires certification from the donee indicating that the items will be managed in accordance with Federal, State, and local laws and regulations. Surplus drugs, biologicals, and reagents requested for donation by State agencies will not be transported by the State agency or stored in its warehouse prior to distribution to donees. Arrangements will be made by the SASP for the donee to make direct pickup at the holding agency after approval by GSA and after notification by the holding agency that the property is ready for pickup. Additionally, the Standard Form (SF) 123 will not be approved by GSA until it has been determined by GSA that the

donee is legally licensed to administer, dispense, store, or distribute such property. A copy of the donee's license, registration, or other legal authorization to administer, dispense, store, or distribute such property should be attached to the SF 123.

(d) Must be unexpired and sold in accordance with rules published by the Food and Drug Administration. You may sell only to those entities legally qualified to engage in the sale, manufacture or distribution of such items. Certification or evidence of licensing must accompany the bids. An entity is legally qualified when a Federal or State agency having legal or regulatory oversight over that commodity has approved the entity to engage in the designated activity.

§ 102–40.75 Firearms.

(a) You must submit reports and transfer documents on excess firearms to GSA. GSA will approve transfers of firearms only to those Federal agencies authorized to acquire firearms for official use, and may require additional written justification from the requesting agency. GSA will not transfer or donate surplus firearms to non-Federal recipients.

(b) You must not abandon firearms. You must destroy unneeded firearms by crushing, cutting, breaking, or deforming each firearm in a manner to ensure that each firearm is rendered completely inoperable and incapable of being made operable for any purpose except the recovery of basic material content. Destruction of firearms must be performed by an entity authorized by your agency head or designee. The destruction must be witnessed by two additional agency employees authorized by the agency head or designee.

(c) Surplus firearms may be sold only for scrap after total destruction as described in paragraph (b) of this section to ensure that the firearms are rendered completely inoperative and to preclude their being made operative.

(1) Except as provided in paragraph (c)(2) of this section, firearms received as foreign gifts may be offered for transfer to Federal agencies or sold to the gift recipient. If sold to the gift recipient, a certification signed by the gift recipient certifying compliance with all Federal, State, and local laws regarding purchase and possession of firearms must be received by the gift recipient's agency and the agency conducting the sale prior to the sale and release of such firearm to the gift recipient.

(2) Firearms subject to the NFA that are received as foreign gifts cannot be lawfully transferred to an individual gift

recipient. These firearms must remain the property of the United States. All firearms must also be transferred, shipped, received, and possessed in accordance with the Gun Control Act of 1968.

(d) You may exchange or sell non-excess, non-surplus firearms in FSC Class 1005 only with the original equipment manufacturer consistent with part 102–39 of this subchapter.

(e) Firearms that are forfeited, voluntarily abandoned, or unclaimed as described in 40 U.S.C. 1306 and 40 U.S.C. 552, must be reported to GSA for disposal.

■ 11. Revise part 102–41 to read as follows:

PART 102–41—DISPOSITION OF SEIZED, FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Subpart A—General Provisions

Sec.

102–41.5 Scope.

Subpart B—Seized or Forfeited Personal Property

102–41.10 Reporting requirements.

102–41.15 Transfer reimbursement of forfeited personal property.

102–41.20 Sale proceeds of forfeited personal property.

Subpart C—Voluntarily Abandoned Personal Property

102–41.25 Options.

102–41.30 Transfer reimbursement.

102–41.35 Sales proceeds.

Subpart D—Unclaimed Personal Property

102–41.40 Options.

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

Subpart A—General Provisions

§ 102–41.5 Scope.

This part covers the disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property under the custody of any Federal agency located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

Subpart B—Seized or Forfeited Personal Property

§ 102–41.10 Reporting requirements.

Report seized or forfeited personal property not retained for official use to the General Services Administration (GSA). You must indicate:

(a) If the property was forfeited in a judicial proceeding or administratively;

(b) If the seized property is subject to pending court proceedings for forfeiture,

and, if so, the name of the defendant, the place and judicial district of the court from which the decree will be issued, and whether you wish to retain the property for official use;

(c) The report or case number; and

(d) The existence or probability of a lien, or other accrued or accruing charges, and the amount involved.

§ 102–41.15 Transfer reimbursement of forfeited personal property.

Recipient agencies do not pay for the property. You may charge the recipient agency all costs incurred in storing, packing, loading, preparing for shipment, and transporting the property. If there are commercial charges incident to forfeiture prior to the transfer, the recipient agency must pay these charges. Any payment due to lien holders or other lawful claimants under a judicial forfeiture must be made in accordance with provisions of the court decree.

§ 102–41.20 Sale proceeds of forfeited personal property.

You must deposit the sales proceeds in the U.S. Treasury as miscellaneous receipts, unless otherwise directed by court decree or specifically authorized by statute.

Subpart C—Voluntarily Abandoned Personal Property

§ 102–41.25 Options.

(a) You may retain the property for official use if needed by your agency. If retained for official use, the property loses its identity as voluntarily abandoned property.

(b) If your agency doesn't need the property, you should determine whether it may be abandoned or destroyed.

(c) Report the property as excess to GSA if paragraphs (a) and (b) of this section do not apply.

§ 102–41.30 Transfer reimbursement.

All transfers of voluntarily abandoned personal property are without reimbursement. You may charge the recipient agency costs you incurred in storing, packing, loading, preparing for shipment, and transporting the property.

§ 102–41.35 Sales proceeds.

You must deposit the sales proceeds of voluntarily abandoned personal property in the U.S. Treasury as miscellaneous receipts.

Subpart D—Unclaimed Personal Property

§ 102–41.40 Options.

(a) Title to unclaimed property vests in the Government after 30 days if not

claimed by the owner. You may retain the property for official use if needed by your agency and you have held the unclaimed property for 30 calendar days without receiving a claim from the former owner. You must maintain records for 3 years after title vests in the Government to permit identification of the property should the former owner file a claim. You must report the property as excess to GSA when no longer needed and deposit any funds received from disposal in a special account to cover any valid claim filed within this 3-year period.

(b) If your agency doesn't need the property, you should determine whether it may be abandoned or destroyed. You are not required to hold unclaimed property for 30 days if abandoning or destroying it; title to the property immediately vests in the Government.

(c) Report the property as excess to GSA if paragraphs (a) and (b) of this section do not apply, or when no longer needed under paragraph (a). Unclaimed personal property is not available for donation because reimbursement at fair market value is required. Any funds received from disposal must be deposited into miscellaneous receipts of the U.S. Treasury.

■ 12. Revise part 102–42 to read as follows:

PART 102–42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Subpart A—General Provisions

Sec.

102–42.5 Scope.

102–42.10 Additional definitions applying to this part.

102–42.15 Retention of foreign gifts and decorations.

102–42.20 Disposition process for foreign gifts and decorations not authorized for employee retention.

102–42.25 Custody of gifts and decorations pending disposal.

102–42.30 Security, care and handling, and delivery of gifts.

102–42.35 Reimbursement.

102–42.40 Appraisals.

102–42.45 Appraisal responsibilities.

102–42.50 Types of appraisals.

102–42.55 Appraisal submission.

102–42.60 Gifts and decorations received by Senators and Senate employees.

102–42.65 Gifts or decorations not disposed of by the Senate Commission on Art.

102–42.70 Gifts and decorations received by the President or Vice President or a member of their family.

102–42.75 Gifts containing hazardous materials.

Subpart B—Utilization of Foreign Gifts and Decorations

102–42.80 Reporting gifts or donations.

102–42.85 Transfer of excess foreign gifts or decorations.

Subpart C—Donation of Foreign Gifts and Decorations

102–42.90 Donations to State agencies.

102–42.95 Special requirements.

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

102–42.100 Sales procedures.

102–42.105 Destruction.

Authority: 40 U.S.C. 121(c); 5 U.S.C. 7342.

Subpart A—General Provisions

§ 102–42.5 Scope.

This part covers the acceptance and disposition of gifts exceeding the minimal value and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts from sources other than a foreign government, refer to part 102–36 of this subchapter. Throughout this part, the terms “we”, “you”, and their variations refer to the employing agency.

§ 102–42.10 Additional definitions applying to this part.

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

(2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C. 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition (unless this individual and the individual's spouse are legally separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition.

Employing agency means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The U.S. House Committee on Ethics of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The U.S. Senate Select Committee on Ethics, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

Foreign government means:

(1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;

(2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and

(3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a tangible or intangible present (other than a decoration) of monetary or non-monetary value tendered by, or received from, a foreign government.

Minimal value means a retail value in the United States at the time of acceptance that is at or below the dollar value established by the General Services Administration (GSA) and published in a Federal Management Regulation (FMR) Bulletin at www.gsa.gov/personalpropertypolicy.

(1) GSA will adjust the definition of minimal value every three years, in consultation with the Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period.

(2) An employing agency may, by regulation, specify a lower value than this Government-wide value for its agency employees.

Spouse means any individual who is lawfully married (unless legally separated), including an individual married to a person of the same sex who was legally married in a state or other jurisdiction (including a foreign country), that recognizes such marriages, regardless of whether or not

the individual's State of residency recognizes such marriages. The term spouse does not include individuals in a formal relationship recognized by a State, which is other than lawful marriage; it also does not include individuals in a marriage in a jurisdiction outside the United States that is not recognized as a lawful marriage under United States law.

§ 102–42.15 Retention of foreign gifts and decorations.

Employees may, with the authorization of their employing agencies, accept and retain the following:

(a) Gifts of minimal value received as souvenirs or marks of courtesy. In instances where a gift exceeds the minimal value, it becomes the property of the U.S. Government, not the employee, and must be reported accordingly.

(b) Decorations presented or awarded in recognition of outstanding or unusually meritorious performance. Should the employing agency deny the employee's retention of the decoration, it will revert to the property of the U.S. Government.

§ 102–42.20 Disposition process for foreign gifts and decorations not authorized for employee retention.

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift exceeding the minimal value, or a decoration they are not authorized to retain:

(1) The employee must report the gift or decoration to their employing agency within 60 days after accepting it.

(2) The employing agency will determine whether to retain the gift or decoration for official use.

(3) If the employing agency declines to retain the gift or decoration for official use or return it to the donor, it must report the item as excess personal property to GSA for Federal utilization screening under § 102–42.80.

(4) If the gift or decoration is not transferred during Federal utilization screening, the employee may purchase the item (see § 102–42.100).

(5) If the employee declines to purchase the gift or decoration, and no Federal requirement exists, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under part 102–37 of this subchapter.

(6) If no SASP requests the gift or decoration for donation, GSA may, with the approval of the Secretary of State, offer it for public sale or authorize its destruction under part 102–38 of this subchapter.

(b) *Monetary gifts.* When an employee receives a monetary gift exceeding the minimal value:

(1) The employee must report the gift to their employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report monetary gifts with potential historic or numismatic (*i.e.*, collectible) value to GSA; or

(ii) Deposit monetary gifts lacking historic or numismatic value with the Department of the Treasury.

§ 102–42.25 Custody of gifts and decorations pending disposal.

(a) The employing agency retains custody of gifts and decorations for which employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts exceeding the minimal value that employees decline to purchase, or decorations not retained for official use or returned to donors.

(c) GSA will not accept physical custody of foreign gifts below the minimal value, or gifts of firearms or alcohol. Firearms reported by the agency as excess must be disposed of in accordance with part 102–40 of this subchapter.

§ 102–42.30 Security, care and handling, and delivery of gifts.

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all associated costs.

§ 102–42.35 Reimbursement.

All transfers of gifts and decorations to Federal agencies or donations through SASPs are conducted without reimbursement for the property itself. However, the employing agency may require the receiving agency to reimburse all or a portion of the direct costs incurred by the employing agency for packing, preparation for shipment, loading, and transportation.

§ 102–42.40 Appraisals.

An appraisal is required in the following circumstances:

(a) When an employee expresses interest in purchasing a gift or decoration. In this situation, the appraisal must be obtained prior to reporting the gift or decoration to GSA for screening (see § 102–42.20);

(b) When GSA requires the employing agency to obtain an appraisal of a gift or decoration retained for official use but no longer needed, prior to accepting the agency's report of the item as excess personal property; or

Note 1 to paragraphs (a) and (b): Refer to § 102–42.50 for guidance on how appraisals under these two situations are handled.

(c) When required by the agency's internal policy, pursuant to 5 U.S.C. 7342(g).

§ 102–42.45 Appraisal responsibilities.

The employing agency is responsible for establishing its own procedure for obtaining an appraisal that accurately reflects the gift's value within the United States. This requirement applies to all gifts, including those the recipient wishes to retain and/or purchase, and also includes personalized items (*e.g.*, books signed by the author, gifts with personal labels).

§ 102–42.50 Types of appraisals.

Your agency may allow—

(a) Written commercial appraisals conducted by an appraisal firm or trade organization; and

(b) Retail value appraisals where the gift's value can be reliably determined by reviewing current, non-discounted retail catalogs, retail price lists, or retail website valuations.

§ 102–42.55 Appraisal submission.

When an appraisal is required under § 102–42.40, the employing agency must upload it in the Personal Property Management System (PPMS) when reporting the gift. By uploading the appraisal, the employing agency certifies that the value cited represents the retail/appraised value of the item in the United States, expressed in U.S. dollars, as of the date indicated on the appraisal.

§ 102–42.60 Gifts and decorations received by Senators and Senate employees.

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Senate Commission on Art under 5 U.S.C. 7342(e)(2). GSA is responsible for the disposal of gifts or decorations received by Members and employees of the House of Representatives.

§ 102–42.65 Gifts or decorations not disposed of by the Senate Commission on Art.

If the Senate Commission on Art does not dispose of a gift or decoration, it must be reported to GSA for disposal. If GSA does not dispose of the gift or decoration within one year of the Commission's reporting, the Commission may:

(a) Request that GSA return the gift or decoration for the Commission to dispose of it independently; or

(b) Allow GSA to continue disposal efforts in accordance with this part.

§ 102–42.70 Gifts and decorations received by the President or Vice President or a member of their family.

The National Archives and Records Administration normally handles gifts and decorations received by the President, Vice President, or a member of their respective families.

§ 102–42.75 Gifts containing hazardous materials.

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 102–40 of this subchapter.

Subpart B—Utilization of Foreign Gifts and Decorations

§ 102–42.80 Reporting gifts or donations.

(a) You must report to GSA gifts exceeding the minimal value (excluding monetary gifts lacking historic or numismatic value) or decorations that the employee is not authorized to retain, which:

(1) Are not being retained for official use or have not been returned to the donor; or

(2) Were received by a Senator or Senate employee and not disposed of by the Senate Commission on Art.

(b) Non-monetary gifts or decorations initially retained for official use must be reported to GSA as excess property within 30 days of the termination of their official use.

(c) Report foreign gifts in PPMS by selecting "Create Foreign Gift" and include the following information:

(1) The name and position of the employee (unless the employee is a member of the intelligence community);

(2) A full description of the gift or decoration, including the title of the decoration;

(3) The identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration;

(4) The date the gift or decoration was accepted by the employee;

(5) The appraised value in United States dollars of the gift or decoration, including the cost of the appraisal (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.);

(6) The current location of the gift or decoration;

(7) The name, address, and telephone number of the accountable official in the employing agency;

(8) Whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special

significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee;

(9) The Presidential Administration in which the gift or decoration was received; and

(10) Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (*e.g.*, a tea set, a necklace and matching earrings) as a single line item.

§ 102–42.85 Transfer of excess foreign gifts or decorations.

(a) To obtain an excess gift or decoration from another agency, you may request it in PPMS. Upon these items no longer being required, you must report them to GSA as foreign gift items.

(b) You may only request excess gifts and decorations for public display or other legitimate agency use, and not for the personal benefit of any individual. GSA may require that transfer orders be supported by justifications for the intended display or official use of the requested gifts and decorations. Jewelry and watches transferred for official display must be displayed with appropriate security measures.

(c) When transferred gifts and decorations are no longer required for official use, they must be reported to GSA as excess property on a Standard Form (SF) 120, including the original transfer order number or a copy of the original transfer order.

Subpart C—Donation of Foreign Gifts and Decorations

§ 102–42.90 Donations to State agencies.

If no Federal requirement exists for the gifts or decorations, and if the gifts were not sold to the employee, GSA may make them available for donation to State agencies. The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (*e.g.*, units of State or local governments and eligible non-profit organizations) by:

(a) Requesting the items in PPMS.

(b) Attaching an original and two copies of a letter of intent to the request in PPMS. An authorized representative of the proposed donee must sign and date the letter, which must detail the plan for the use of the property. The letter of intent must provide the following information:

(1) Identification of the donee applicant, including its legal name and complete address, its status as a public agency or eligible nonprofit tax-exempt activity, and the name, title, and

telephone number of its authorized representative(s);

(2) A description of the gift or decoration requested, including its commercially appraised value or estimated fair market value if a commercial appraisal was not performed; and

(3) Details regarding the planned use of the gift or decoration, including its intended location, how it will be used, and the measures in place to safeguard it.

§ 102-42.95 Special requirements.

GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or adopt by reference the following:

(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) A restriction period of typically 10 years applies to the use outlined in the letter of intent; however, GSA may adjust this period based upon the item's nature.

(c) The donee must allow authorized representatives of the SASP or the U.S. Government the right of access to the donee's premises at reasonable times for inspection of the gift or decoration.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Take any action that could contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the restriction period, the donee must promptly notify GSA through the SASP. Upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the restriction period, the SASP may

demand the return of the gift or decoration. Upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay the U.S. Government the fair market value of the gift or decoration at the time of its loss, theft, or when it became unrecoverable, as determined by GSA. If the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

§ 102-42.100 Sales procedures.

(a) The Secretary of State, or their designee, must approve any sale of foreign gifts or decorations, with the exception of sales to the employee, which are approved as outlined in this part.

(b) Foreign gifts and decorations must first be offered through negotiated sales, in accordance with part 102-38 of this subchapter, to the employee who has expressed interest in purchasing the item. The sale price will be the commercially appraised value of the gift.

(c) A public sale is authorized if a foreign gift or decoration:

(1) Survives Federal utilization screening;

(2) Is not purchased by the employee;

(3) Survives donation screening; and

(4) Is approved by the Secretary of State or designee.

(d) The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

§ 102-42.105 Destruction.

Foreign gifts or decorations that are not sold under this section may be destroyed and disposed of as scrap or for their material content, in accordance with part 102-38 of this subchapter.

■ 13. Revise part 102-71 to read as follows:

PART 102-71—REAL PROPERTY MANAGEMENT

Subpart A—General

Sec.

102-71.5 GSA real property policies.

102-71.10 Definitions.

102-71.15 Deviation.

102-71.20 Installing, repairing, and replacing sidewalks.

102-71.25 Fire Administration Authorization Act of 1992.

102-71.30 Automatic sprinkler systems.

102-71.35 Equivalent level of safety analysis.

102-71.40 Analytical and empirical tools available to support the life safety equivalency evaluation.

102-71.45 Responsible party for determining the acceptability of each equivalent level of safety analysis.

102-71.50 Rent.

102-71.55 Establishing an occupant emergency program.

102-71.60 Occupant agencies are required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

102-71.65 Federal agency occupant emergency responsibilities.

102-71.70 Decision to activate the Occupant Emergency Organization.

102-71.75 Accomplishing occupant evacuation or relocation when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

102-71.80 Action the Designated Official must initiate when there is advance notice of an emergency.

102-71.85 Portable heaters, fans, and other such devices.

102-71.90 Tobacco policy for interior space in Federal facilities.

102-71.95 Tobacco policy exceptions.

102-71.100 Tobacco product restrictions applicable to outside areas under executive branch control.

102-71.105 Furnishing and installing signs concerning tobacco product restrictions.

102-71.110 Monitoring and controlling areas designated for tobacco products by an agency head.

102-71.115 When a State or local government has a tobacco product-free ordinance that is stricter than the tobacco policy for Federal facilities.

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Subpart B—Use of Federal Real Property To Assist the Homeless

102-71.125 Definitions.

102-71.130 Applicability.

102-71.135 Collecting the information.

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102-71.145 Real property reported excess to GSA.

102-71.150 Suitability criteria.

102-71.155 Determination of availability for suitable properties.

102-71.160 Public notice of determination.

102-71.165 General policies of HHS.

102-71.170 Expression of interest process.

102-71.175 Application process and requirements.

- 102–71.180 Action on approved applications.
- 102–71.185 Surplus property transfer documents.
- 102–71.190 Unsuitable properties.
- 102–71.195 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).
- 102–71.200 No applications approved.
- 102–71.205 Utilization and enforcement.
- 102–71.210 Other uses.
- 102–71.215 Abrogation.
- 102–71.220 Compliance inspections and reports.
- 102–71.225 No right of administrative review for agency decisions.
- 102–71.230 Waivers.
- 102–71.235 Severability.

Authority: 40 U.S.C. 121(c), 586(b)(2), 589(c), 15 U.S.C. 2227(d), 42 U.S.C. 11411 note.

Subpart A—General

§ 102–71.5 GSA real property policies.

GSA's real property policies contained in this part apply to Federal agencies, including GSA's Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The detailed guidance implementing the policies in this part is contained in separate customer service guides that may be found at <https://www.gsa.gov/directives-library>. For more information, contact GSA at realpropertypolicy@gsa.gov.

§ 102–71.10 Definitions.

The following definitions apply to GSA's real property policies:

Alteration means remodeling, improving, extending, or making other changes to a facility, exclusive of maintenance repairs that are preventive in nature. The term includes planning, engineering, architectural work, and other similar actions.

Designated Official is the highest ranking official of the primary occupant agency of a Federal facility, or, alternatively, a designee selected by mutual agreement of occupant agency officials.

Executive agency means an executive department specified in 5 U.S.C. 101; a military department specified in 5 U.S.C. 102; an independent establishment as defined in 5 U.S.C. 104(1); and a wholly owned Government corporation fully subject to the provisions of 31 U.S.C. chapter 91.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

Flashover means fire conditions in a confined area where the upper gas layer temperature reaches 600 °C (1100 °F) and the heat flux at floor level exceeds 20 kW/m² (1.8 Btu/ft²/sec).

GSA means the U.S. General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this part have been delegated by the Administrator of General Services.

Maintenance means the upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment. Maintenance may also mean preservation by inspection, adjustment, lubrication, cleaning, and the making of minor repairs. *Ordinary maintenance* means routine recurring work that is incidental to everyday operations; *preventive maintenance* means work programmed at scheduled intervals.

Management means the safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

Nonprofit organization means an organization identified in 26 U.S.C. 501(c).

Occupancy Emergency Organization means the emergency response organization comprised of employees of Federal agencies designated to perform the requirements established by the Occupant Emergency Plan.

Occupant agency means an organization that is assigned space in a facility under GSA's custody and control.

Occupant Emergency Plan means procedures developed to protect life and property in a specific federally occupied space under stipulated emergency conditions.

Occupant Emergency Program means a short-term emergency response program. It establishes procedures for safeguarding lives and property during emergencies in particular facilities.

Protection means the provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against theft, vandalism, and unauthorized entry.

Public body means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

Qualified fire protection engineer means an individual with a thorough knowledge and understanding of the principles of physics and chemistry governing fire growth, spread, and suppression, meeting one of the following criteria:

(1) An engineer having an undergraduate or graduate degree from a college or university offering a course of study in fire protection engineering, fire protection engineering technology or fire safety engineering that is accredited by the Accreditation Board for Engineering and Technology or a similar accreditation, plus a minimum of 4 years work experience in fire protection engineering.

(2) A professional engineer (P.E. or similar designation) who has passed the Principles and Practice of Engineering examination in fire protection administered by the National Council of Examiners for Engineering and Surveying (NCEES).

(3) A P.E., or similar designation, licensed in a related engineering discipline and holding the grade of Professional Member in the Society of Fire Protection Engineers.

Real property means:

(1) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except—

(i) The public domain;

(ii) Lands reserved or dedicated for national forest or national park purposes;

(iii) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(iv) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved that the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and

(v) Crops when designated by such agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, on lands withdrawn or reserved from the public domain, on lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house trailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency, whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

Reasonable worst-case fire scenario means a combination of an ignition source, fuel items, and a building location likely to produce a fire that would have a significant adverse impact on the building and its occupants. The development of reasonable worst-case scenarios must include consideration of types and forms of fuels present (e.g., furniture, trash, paper, chemicals), potential fire ignition locations (e.g., bedroom, office, closet, corridor), occupant capabilities (e.g., awake, intoxicated, mentally or physically impaired), numbers of occupants, detection and suppression system adequacy and reliability, and fire department capabilities. A quantitative analysis of the probability of occurrence of each scenario and combination of events will be necessary.

Repairs means those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

Room of origin means an area of a building where a fire can be expected to start. Typically, the size of the area will be determined by the walls, floor, and ceiling surrounding the space. However, this could lead to unacceptably large areas in the case of open plan office space or similar arrangements. Therefore, the maximum allowable fire area should be limited to 200 m² (2000 ft²), including intervening spaces. In the case of residential units, an entire apartment occupied by one tenant could be considered as the room of origin to the extent it did not exceed the 200 m² (2000 ft²) limitation.

State means the fifty States, political subdivisions thereof, the District of Columbia, the Commonwealths of Puerto Rico and Guam, and the territories and possessions of the United States.

Tobacco product means any item made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product). Tobacco product does not mean any item specifically excluded by the Food, Drug, and Cosmetic Act, 21 U.S.C. 301 *et seq.*

Upon approval from GSA means when an agency either has a delegation of authority document from the Administrator of General Services or written approval from the Administrator or his/her designee before proceeding with a specified action.

§ 102–71.15 Deviation.

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

§ 102–71.20 Installing, repairing, and replacing sidewalks.

(a) In accordance with 40 U.S.C. 589, Federal agencies must comply with the real property policies governing the installation, repair and replacement of sidewalks around buildings, installations, properties, or grounds under the control of executive agencies and owned by the United States. The Federal Government must fund the cost of installing, repairing, and replacing sidewalks. Funds appropriated to the agency for installation, repair, and maintenance, generally, must be available for expenditure to accomplish the purposes of this subpart. Upon approval from GSA, Federal agencies may—

(1) Authorize the appropriate State or local government to install, repair and replace sidewalks, or arrange for this work, and reimburse them for this work; or

(2) Contract or otherwise arrange and pay directly for installing, repairing and/or replacing sidewalks.

(b) Federal agencies, giving due consideration to State and local standards and specifications for sidewalks, decide when to install, repair or replace a sidewalk. However, Federal agencies may prescribe other standards and specifications for sidewalks whenever necessary to achieve architectural harmony and maintain facility security.

§ 102–71.25 Fire Administration Authorization Act of 1992.

The Fire Administration Authorization Act of 1992 (Pub. L. 102–522) requires sprinklers or an equivalent level of safety in certain types of Federal employee office buildings, Federal employee housing units, and federally assisted housing units (15 U.S.C. 2227).

§ 102–71.30 Automatic sprinkler systems.

The performance objective of the automatic sprinkler system is that it must be capable of protecting human lives. Sprinklers must be capable of controlling the spread of fire and its effects beyond the room of origin. A functioning sprinkler system must activate prior to the onset of flashover.

§ 102–71.35 Equivalent level of safety analysis.

(a) The equivalent level of life safety analysis is to be performed by a qualified fire protection engineer. The analysis must include a narrative discussion of the features of the building structure, function, operational support systems and occupant activities that impact fire protection and life safety. Each analysis must describe potential reasonable worst case fire scenarios and their impact on the building occupants and structure. Specific issues that must be addressed include rate of fire growth, type and location of fuel items, space layout, building construction, openings and ventilation, suppression capability, detection time, occupant notification, occupant reaction time, occupant mobility, and means of egress.

(b) To be acceptable, the analysis must indicate that the existing or proposed safety systems in the building provide a period of time equal to or greater than the amount of time available for escape in a similar building complying with the Fire Administration Authorization Act. In conducting these analyses, the capability, adequacy, and reliability of all building systems impacting fire growth, occupant knowledge of the fire, and time required to reach a safety area will have to be examined. In particular, the impact of sprinklers on the development of hazardous conditions in the area of interest will have to be assessed.

(c) There are three options for establishing that an equivalent level of safety exists:

(1) In the first option, the margin of safety provided by various alternatives is compared to that obtained for a code-compliant building with complete sprinkler protection. The margin of safety is the difference between the available safe egress time and the

required safe egress time. Available safe egress time is the time available for evacuation of occupants to an area of safety prior to the onset of untenable conditions in occupied areas or the egress pathways. The required safe egress time is the time required by occupants to move from their positions at the start of the fire to areas of safety. Available safe egress times would be developed based on analysis of a number of assumed reasonable worst case fire scenarios including assessment of a code complying fully sprinklered building. Additional analysis would be used to determine the expected required safe egress times for the various scenarios. If the margin of safety plus an appropriate safety factor is greater for an alternative than for the fully sprinklered building, then the alternative should provide an equivalent level of safety.

(2) A second alternative is applicable for typical office and residential scenarios. In these situations, complete sprinkler protection can be expected to prevent flashover in the room of fire origin, limit fire size to no more than 1 megawatt (950 Btu/sec), and prevent flames from leaving the room of origin. The times required for each of these conditions to occur in the area of interest must be determined. The shortest of these three times would become the time available for escape. The difference between the minimum time available for escape and the time required for evacuation of building occupants would be the target margin of safety. Various alternative protection strategies would have to be evaluated to determine their impact on the times at which hazardous conditions developed in the spaces of interest and the times required for egress. If a combination of fire protection systems provides a margin of safety equal to or greater than the target margin of safety, then the combination could be judged to provide an equivalent level of safety.

(3) As a third option, other technical analysis procedures, as approved by the responsible agency head, can be used to show equivalency.

§ 102–71.40 Analytical and empirical tools available to support the life safety equivalency evaluation.

(a) Fire models and performance-based design methodologies such as those outlined in the Society of Fire Protection Engineers (SFPE) Engineering Guide to Performance-Based Fire Protection and the National Fire Protection Association (NFPA) 101 Life Safety Code must be used to support the life safety equivalency evaluation.

(b) If fire modeling is used as part of an analysis, an assessment of the

predictive capabilities of the fire models must be included. This assessment must be conducted in accordance with the SFPE Engineering Guide for Substantiating a Fire Model for a Given Application and the American Society for Testing and Materials “Standard Guide for Evaluating the Predictive Capability of Deterministic Fire Models” (ASTM E1355).

§ 102–71.45 Responsible party for determining the acceptability of each equivalent level of safety analysis.

The head of the agency, responsible for physical improvements in the facility or providing Federal assistance, or a designated representative will determine the acceptability of each equivalent level of safety analysis. The determination of acceptability must include a review of the fire protection engineer’s qualifications, the appropriateness of the fire scenarios for the facility, and the reasonableness of the assumed maximum probable loss. Agencies must maintain a record of each accepted equivalent level of safety analysis and provide copies to fire departments or other local authorities for use in developing pre-incident plans.

§ 102–71.50 Rent.

Rent is set in accordance with the GSA Pricing Desk Guide.

§ 102–71.55 Establishing an occupant emergency program.

The Designated Official (as defined in § 102–71.10) is responsible for developing, implementing and maintaining an Occupant Emergency Plan (as defined in § 102–71.10). The Designated Official’s responsibilities include establishing, staffing and training an Occupant Emergency Organization with agency employees. Federal agencies, upon approval from GSA, must assist in the establishment and maintenance of such plans and organizations.

§ 102–71.60 Occupant agencies are required to cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

All occupant agencies of a facility must fully cooperate with the Designated Official in the implementation of the emergency plans and the staffing of the emergency organization.

§ 102–71.65 Federal agency occupant emergency responsibilities.

Federal agencies, upon approval from GSA, must—

(a) Provide emergency program policy guidance;

(b) Review plans and organizations annually;

(c) Assist in training of personnel;

(d) Otherwise provide for the proper administration of Occupant Emergency Programs (as defined in § 102–71.10);

(e) Solicit the assistance of the lessor in the establishment and implementation of plans in leased space; and

(f) Assist the Occupant Emergency Organization (as defined in § 102–71.10) by providing technical personnel qualified in the operation of utility systems and protective equipment.

§ 102–71.70 Decision to activate the Occupant Emergency Organization.

The decision to activate the Occupant Emergency Organization must be made by the Designated Official, or by the designated alternate official. After normal duty hours, the senior Federal official present must represent the Designated Official or his/her alternates and must initiate action to cope with emergencies in accordance with the plans. The Designated Official must make a decision to activate the Occupant Emergency Organization based upon the best available information, including—

(a) An understanding of local tensions;

(b) The sensitivity of target agency(ies);

(c) Previous experience with similar situations;

(d) Advice from the Federal agency buildings manager;

(e) Advice from the appropriate Federal law enforcement official; and

(f) Advice from Federal, State, and local law enforcement agencies.

§ 102–71.75 Accomplishing occupant evacuation or relocation when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

The Designated Official must initiate action to evacuate or relocate occupants in accordance with the plan by sounding the fire alarm system or by other appropriate means when there is immediate danger to persons or property, such as fire, explosion or the discovery of an explosive device (not including a bomb threat).

§ 102–71.80 Action the Designated Official must initiate when there is advance notice of an emergency.

The Designated Official must initiate appropriate action according to the plan when there is advance notice of an emergency.

§ 102–71.85 Portable heaters, fans, and other such devices.

Federal agencies are prohibited from operating portable heaters, fans, and other such devices in Government-controlled facilities unless authorized by the Federal agency buildings manager.

§ 102–71.90 Tobacco policy for interior space in Federal facilities.

(a) It is the policy of the executive branch to establish a tobacco product-free environment for Federal employees and members of the public visiting or using Federal facilities. The use of tobacco products is prohibited in all interior space owned, rented or leased by the executive branch of the Federal Government.

(b) This section applies to the judicial branch when it occupies space in buildings controlled by the executive branch. Furthermore, the Federal Chief Judge in a local jurisdiction may be deemed to be comparable to an agency head and may establish exceptions for Federal jurors and others as provided in § 102–71.95(d).

§ 102–71.95 Tobacco policy exceptions.

The tobacco policy in this subpart does not apply in—

(a) Any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased or rented by the Federal Government;

(b) Portions of federally owned buildings leased, rented, or otherwise provided in their entirety to non-Federal parties;

(c) Places of employment in the private sector or in other non-Federal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees; and

(d) Instances where an agency head establishes limited and narrow exceptions that are necessary to accomplish agency missions. Such exceptions must be in writing, approved by the agency head and, to the fullest extent possible, provide others protection from exposure to environmental impacts of tobacco products. Authority to establish such exceptions may not be delegated.

§ 102–71.100 Tobacco product restrictions applicable to outside areas under executive branch control.

Use of tobacco products is prohibited in courtyards and within twenty-five (25) feet of doorways and air intake ducts on outdoor space under the jurisdiction, custody, or control of GSA.

§ 102–71.105 Furnishing and installing signs concerning tobacco product restrictions.

Federal agency building managers are responsible for furnishing and installing suitable, uniform signs in the building, and in and around building entrance doorways and air intake ducts.

§ 102–71.110 Monitoring and controlling areas designated for tobacco products by an agency head.

Agency heads are responsible for monitoring and controlling areas designated by them under § 102–74.95(d) of this subchapter and identifying these areas with proper signage. Suitable, uniform signs must be furnished and installed by the occupant agency.

§ 102–71.115 When a State or local government has a tobacco product-free ordinance that is stricter than the tobacco policy for Federal facilities.

If the subject facility is federally owned, then Federal preemption principles apply and the Federal policy controls. If the subject facility is privately owned, then Federal tenants are subject to the provisions of the State or local ordinance, even in the federally leased space, if the State or local restrictions are more stringent than the Federal policy.

§ 102–71.120 Severability.

All provisions included in this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions will continue in effect.

Subpart B—Use of Federal Real Property To Assist the Homeless**§ 102–71.125 Definitions.**

Applicant means any eligible organization that has submitted an application to the Department of Health and Human Services to obtain use of a certain suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day, including weekends and holidays.

Eligible organization means a State or local government agency, or a private, non-profit organization that provides assistance to the homeless, and that is authorized under the State law in which the property is located to carry out the

activity for which it requests property and enter into an agreement with the Federal Government for use of property for the purposes of this part. Eligible organizations that are private, non-profit organizations interested in applying for suitable property must be tax exempt under section 501(c)(3) of the Internal Revenue Code at the time of application and remain tax exempt throughout the time the Federal Government retains a reversionary interest in the property.

Encumbrance means any non-approved use by a transferee or a third party that limits the full utilization of the transferred property, regardless of time period, and includes liens, easements, restrictive covenants, licenses, leases, mortgages, informal agreements, and unaddressed trespass.

Excess property means any property under the control of a Federal executive agency that the head of the agency determines is not required to meet the agency's needs or responsibilities, pursuant to 40 U.S.C. 524.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless is defined in 42 U.S.C. 11302. This term is synonymous with "homeless individual" and "homeless person."

HUD means the Department of Housing and Urban Development.

HUD website means a website maintained by HUD providing information about HUD, including any successor websites or technologies that are equally accessible and available to the public.

Landholding agency means the Federal department or agency with statutory authority to control property. For purposes of this subpart, the landholding agency is typically the Federal department or agency that had custody and accountability on behalf of the Federal Government, of a certain piece of property at the time that such property was reported to HUD for a suitability determination pursuant to 42 U.S.C. 11411.

Lease means an agreement in writing between either HHS for surplus property or landholding agencies for underutilized and unutilized properties and the applicant giving rise to the relationship of lessor and lessee for the use of Federal property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization recognized as a non-profit by the State in which the organization operates, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or

individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time, usually one year or less, under terms and conditions determined by the landholding agency. A permit does not grant to the recipient an estate in land or any interest in the property.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

Related personal property means any personal property that is located on real property and is either an integral part of or useful in the operation of that property or is determined by GSA to be otherwise related to the property.

Representative of the homeless means a State or local government agency, or private nonprofit organization that provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal executive agencies to determine if they have an interest in using excess Federal property to carry out a particular agency mission, and then surveys State, local, and non-profit entities, to determine if any such entity has an interest in using surplus Federal property to carry out a specific public use.

State means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

Suitable property means that HUD has determined that a certain property satisfies the criteria listed in § 102–71.150.

Surplus property means any excess property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by GSA.

Transfer document means a lease, deed, or permit transferring surplus, unutilized, or underutilized property.

Transferee means an eligible entity that acquires Federal property by lease, deed, or permit.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or

intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in § 102–71.150.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

§ 102–71.130 Applicability.

(a) This subpart applies to Federal property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus and is therefore subject to the provisions of title V of the McKinney Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

(1) Buildings and property at military installations that were approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Pub. L. 101–510; 10 U.S.C. 2687 note) after October 25, 1994.

(2) Machinery and equipment not determined to be related personal property by the landholding agency or GSA or determined to be related personal property that the landholding agency or GSA chooses to dispose of separate from real property.

(3) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(4) Properties subject to special legislation directing a particular action.

(5) Properties subject to a court order that is binding on the Federal Government and, for any reason, precludes transfer for use to assist the homeless under the authority of 42 U.S.C. 11411.

(6) Property not subject to Federal Real Property Council reporting requirements in accordance with 40 U.S.C. 623(i).

(7) Mineral rights interests independent of surface rights.

(8) Air space interests independent of surface rights.

(9) Indian Reservation land subject to 40 U.S.C. 523.

(10) Property interests subject to reversion.

(11) Easements.

(12) Any building or fixture that is excess, or surplus, that is on land under the control of a landholding agency, where the underlying land is not excess or surplus.

(13) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this subpart.

§ 102–71.135 Collecting the information.

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass each landholding agency to collect information about property described as unutilized, underutilized, excess or surplus in accordance with 40 U.S.C. 524; however, HUD will accept property information between canvasses. Each canvass will collect information on properties not previously reported, and about property reported previously where the status or classification of the property has changed, or improvements have been made to the property. HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described in this section, of the suitability of a property for use to assist the homeless. Landholding agencies must report property information to HUD using the property checklist developed by HUD for that purpose. Property checklists submitted in response to a canvass must be submitted to HUD within 25 days of receipt of the canvass.

(b) *Agency annual suitable property report.* By December 31 of each year, each landholding agency must notify HUD of the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist changes subsequent to HUD's determination of suitability, including any improvements or other alterations to the physical condition of the land or the buildings on the property, and the property remains unutilized, underutilized, excess, or surplus, the landholding agency must submit a revised property checklist in response to

the next quarterly canvass. HUD will review for suitability and, if it differs from the previous determination, repost the property information on the HUD website. For example, property determined unsuitable due to extensive deterioration may have had improvements, or property determined suitable may subsequently be found to be extensively deteriorated.

§ 102–71.140 Suitability determination.

(a) *Suitability determination.* Within 30 days after the receipt of a completed property checklist from landholding agencies either in response to a quarterly canvass, or between canvasses, HUD will determine, using the criteria set forth in 24 CFR 581.6 whether a property is suitable for use to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102–71.155.

(d) *Record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102–71.155(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication of a notice of unsuitability on the HUD website.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD, in writing, through the U.S. Mail, email, or the

HUD website, or such other method as HUD may require, within 20 days of publication of the notice of unsuitability.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless.

(3) The request for review must specify the grounds on which it is based, *i.e.*, HUD has improperly applied the criteria or HUD has relied on incorrect or incomplete information in making the determination (*e.g.*, that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency or GSA that such a request has been made. The landholding agency or GSA shall have 20 days from receipt of the notice from HUD, or an extended period agreed to between HUD and the landholding agency or GSA, to provide any information pertinent to the review. The landholding agency or GSA must refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability. If the landholding agency or GSA fails to meet the deadline, HUD will move forward with the appeal review with the property information it already has and information submitted in the appeal request provided by the representative of the homeless.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's or GSA's response, or, if the landholding agency or GSA failed to meet the deadline, within 30 days of such deadline, and will notify the representative of the homeless and the landholding agency or GSA in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's or GSA's determination of availability pursuant to § 102–71.115, upon receipt of which HUD will promptly publish the determination on the HUD website.

§ 102–71.145 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports an excess property to GSA that HUD has already determined to be suitable for use to assist the homeless, GSA will screen the property pursuant to paragraph (h) of this section and will

advise HUD of the availability of the property for use by the homeless as provided in paragraph (e) of this section. In lieu of the preceding sentence, GSA may submit a new checklist to HUD and follow the procedures in paragraphs (c) through (h) of this section.

(c) If a landholding agency reports an excess property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, such as from unutilized or underutilized to excess or surplus.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives notification from HUD listing suitable excess properties, GSA will transmit a response to HUD within 45 days. GSA's response will include the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When GSA submits a checklist to HUD in accordance with paragraphs (b) and (c) of this section, the information regarding the availability of the property, as specified in paragraphs (e)(1) and (2) of this section, may be included with the checklist if it is known at the time of submittal.

(g) When a surplus property is determined as suitable, confirmed as available by GSA, and notice is published on the HUD website, GSA will concurrently notify HHS, State and local government units, and known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(h) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with this part.

(i) The landholding agency will retain custody and accountability and will

protect and maintain any property that is reported excess to GSA.

§ 102–71.150 Suitability criteria.

(a) In general, properties will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *Flammable or explosive hazards.* Property located less than an acceptable separation distance under the standards in 24 CFR part 51, subpart C (for additional guidance see HUD Guidebook "Siting of HUD-Assisted Projects Near Hazardous Facilities," or successor guidebook), from any stationary aboveground container or facility which stores, handles, or processes hazardous substances of an explosive or fire prone nature (excluding containers and facilities that are not hazards as defined in 24 CFR 51.201), unless HUD can determine during the review period based on information provided by the landholding agency that appropriate mitigating measures, as defined in 24 CFR 51.205, are already in place.

(2) *Coastal barriers.* Property located in a System Unit, as defined at 16 U.S.C. 3502(7), under the Coastal Barrier Resources Act, as amended (16 U.S.C. 3501 *et seq.*).

(3) *Site safety conditions.* Property with a documented and extensive condition(s) that represents a clear threat to personal physical safety or health. Such conditions may include, but are not limited to, significant contamination from hazardous substances, as defined by 42 U.S.C. 9601, periodic flooding, sinkholes, or landslides.

(b) In the cases in paragraphs (b)(1) through (4) of this section, properties will be determined unsuitable, unless the landholding agencies provide information to enable HUD to determine the property is suitable:

(1) *Inaccessible.* Property that is inaccessible, meaning that the property is not accessible by road (including property on small offshore islands) or is landlocked (*e.g.*, can be reached only by crossing private property and there is no established right or means of entry).

(2) *National security.* Property located in an area to which the general public is denied access in the interest of national security (*e.g.*, where a special pass or security clearance is a condition of entry to the property), unless there is an alternative method to gain access without compromising national security.

(3) *Runway clear zones.* Property located within a runway clear zone or a military airfield clear zone.

(4) *Floodway.* Property located in a floodway, unless only an incidental portion of the property is in the floodway and that incidental portion does not affect the use of the remainder of the property to assist the homeless.

§ 102–71.155 Determination of availability for suitable properties.

Within 45 days after receipt of notification from HUD pursuant to § 102–71.135(a) that a property has been determined to be suitable, each landholding agency or GSA must transmit to HUD a statement of one of the following:

(a) In the case of unutilized or underutilized property—

(1) An intention to declare the property excess;

(2) A statement to make the property available for use to assist the homeless; or

(3) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different from those listed as suitability criteria in § 102–71.150.

(b) In the case of excess property which has been reported to GSA—

(1) A statement that there is no compelling Federal need for the property, and, therefore, the property will be determined surplus; or

(2) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and therefore, the property is not presently available for use to assist the homeless.

§ 102–71.160 Public notice of determination.

(a) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding availability, HUD will post on the HUD website a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) HUD will establish and maintain a toll-free number for the public to obtain specific information about properties in paragraph (a) of this section.

(c) No later than 15 days after the most recent 45-day period has elapsed for receiving responses from the landholding agencies or GSA regarding

availability, HUD will transmit to the United States Interagency Council on Homelessness (USICH) a copy of the list of all properties in paragraph (a) of this section. The USICH will immediately distribute to all State and regional homeless coordinators area-relevant portions of the list. The USICH will encourage the State and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the **Federal Register** a list of all properties in the agency annual suitable property reports, reported to HUD pursuant to § 102–71.135(b).

(e) HUD will publish an annual list of properties determined suitable, but which agencies reported unavailable including the reasons such properties are not available.

§ 102–71.165 General policies of HHS.

(a) It is the policy of HHS to foster and assure maximum utilization of surplus property for homeless assistance purposes.

(b) Transfers may be made only to eligible organizations.

(c) Property will be requested for assignment only when HUD has made a final determination that the property is suitable for use to assist the homeless, GSA has determined it is available, and HHS has determined it is needed for homeless assistance purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for homeless assistance purposes or will be so needed within the immediate or foreseeable future.

(d) Transfers by deed will be made only after the applicant's financial plan is approved and the applicant provides certification that the proposed program is permissible under all applicable State and local zoning restrictions, building codes, and similar limitations.

(e) In instances of noncompliance, transferees are provided an opportunity to cure the noncompliance pursuant to 45 CFR 12a.10.

§ 102–71.170 Expression of interest process.

(a) Properties published by HUD as suitable and available, pursuant to § 102–71.160, for application for use to assist the homeless shall not be available for any other purpose for a period of 30 days beginning on the date the list of properties is published on the HUD website. Any eligible organization interested in any underutilized,

unutilized, excess, or surplus property for use to assist the homeless must send HHS a written expression of interest in that property within 30 days after the property has been published on the HUD website.

(b) Although a property may be determined suitable by HUD, HUD's determination does not mean a property is necessarily fit for use for the purpose(s) stated in the application, nor does it guarantee subsequent conveyance or transfer of a property.

(c) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 30-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(1) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to HHS by email, rpb@psc.hhs.gov, or by mail at the following address: Department of Health and Human Services, Program Manager, Federal Real Property Assistance Program, Real Estate Logistics and Operations, 5600 Fishers Lane, Rockville, Maryland 20852.

(2) HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a certain property.

(d) An expression of interest may be sent to and accepted by HHS any time after the 30-day holding period has expired only if the property remains available as determined by GSA or the landholding agency for application to assist the homeless. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(1) There are no pending applications or written expressions of interest made under any law for use of the property for any purpose; and

(2) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

§ 102-71.175 Application process and requirements.

(a) Upon receipt of an expression of interest, HHS will send an application packet to the interested entity. The application packet requires the

applicant to provide certain information, including the following—

(1) *Acquisition type.* The applicant must state whether it is requesting acquisition of the property by lease, deed, or permit. A lease of one year, extendable at HHS's discretion, with the concurrence of GSA or the landholding agency, may be granted when the applicant's initial application is approved and the applicant's final application outlining the applicant's financial plan is found to be otherwise reasonable based on the criteria in paragraph (a)(7) of this section, but either a change in zoning is required or the financial plan proposes to utilize Low-Income Housing Tax Credits or other funding sources that typically take longer to process than other forms of financing. Applicants that initially apply for transfer by lease or permit and subsequently request transfer by deed will follow the same bifurcated application process, including deadlines, contained in 42 U.S.C. 11411. Should an applicant wish to transition from acquisition by lease to acquisition by deed, HHS will issue a letter of commitment to a lessee indicating that, provided its application meets all application criteria, including securing of all necessary financing that complies with Federal Government requirements, HHS will issue a deed.

(2) *Description of the applicant organization.* The applicant must document that it satisfies the definition of an *eligible organization* as specified in § 102-71.125.

(3) *Description of the property desired.* The applicant must describe the listed property desired, including existing zoning. Applicants must certify that any modification(s) made to and use of the property will conform to all applicable building codes, and local use restrictions, or similar limitations. In accordance with GSA policy, determinations regarding parcelization are made prior to screening. Therefore, expressions of interest and applications for portions of listed properties will not be accepted.

(4) *Description of the proposed program.* The applicant must fully describe the proposed program and plan of use, including implementation plans.

(5) *Demonstration of need.* The applicant must demonstrate that the property is needed for homeless assistance purposes at the time of application and how the program will address the needs of the homeless population to be assisted. The applicant must demonstrate that it has an immediate need and ability to utilize all of the property for which it is applying.

(6) *Demonstrate that the property is suitable and adaptable for the proposed program and plan of use.* The applicant must fully explain why the property is suitable and describe what, if any, modification(s) will be made to the property before the program becomes operational.

(7) *Ability to finance and operate the proposed program.* If the applicant's initial application is approved, the applicant must set forth a reasonable plan to finance the approved program within 45 days of the initial approval. To be considered reasonable, the plan must, at a minimum:

(i) Specifically describe all anticipated costs and sources of funding for the proposed program, including any property modifications;

(ii) Be accompanied by supporting documentation which demonstrates that the proposed plan is likely to succeed;

(iii) Demonstrate that the applicant is ready, willing, able, and authorized to assume care, custody, and maintenance of the property;

(iv) Demonstrate that it has secured the necessary dedicated funds, or will obtain such funds, to carry out the approved proposed program and plan of use for the property, including administrative expenses incident to the transfer by deed, lease, or permit;

(v) Not diminish the value of the Federal Government's interest in the property nor impair the Federal Government's ability to revert and immediately dispose of the property free of any and all liens, encumbrances, or anything else which renders the property unmarketable. Deed transfers will only be made after an applicant demonstrates its financial plan adequately protects the Federal Government's interest in the property; and

(vi) Neither subject the Federal Government's interest in the property to foreclosure nor impose obligations (e.g., extended use agreements) on the Federal Government.

(8) *Compliance with non-discrimination requirements.* Each applicant under this part must certify in writing that it will comply with all requirements of Federal law and HHS policy, as amended, relating to non-discrimination, including the following: the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations at 24 CFR part 100; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Non-discrimination in Federally Assisted Programs) and implementing

regulations at 24 CFR part 1 and 45 CFR part 80; section 1557 of the Affordable Care Act and implementing regulations at 45 CFR part 92; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146 and 44 CFR part 91; and the prohibitions against discrimination against otherwise qualified individuals with disabilities under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 and 45 CFR part 84. The applicant must maintain the required records to demonstrate compliance with all applicable Federal laws and HHS policies related to non-discrimination.

(9) *Insurance and indemnification.* The applicant must certify that it will insure the property against loss, damage, or destruction to protect the residual financial interest of the United States. The United States shall be named as an additional insured. Applicants must provide proof of insurance annually or upon request. Failure to maintain sufficient insurance may result in adverse action, including reversion of the property, at the discretion of HHS. In the event of a covered loss, the transferee must hold all insurance proceeds in trust and obtain written concurrence from HHS before disbursing the funds. Applicants, and all affiliated parties utilizing the property, as approved by HHS, must indemnify the United States and hold the United States harmless for all actions involving use of the property.

(10) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(11) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency. However, the burden is on the applicant to submit sufficient documentation for analysis by HHS.

(12) *Local government notification.* The applicant must certify that it has notified the applicable unit of general local government responsible for sewer, water, police, and fire services, in writing, of its proposed program for the specific property and submit a copy of that written notification.

(13) *Zoning and local use restrictions.* An applicant requesting a deed must certify that it has consulted all State and local governmental entities that will have jurisdiction over the property and that the proposed use will comply with all applicable zoning and local use restrictions, including local building code requirements. An applicant that applies for a lease or permit is not required to comply with local zoning requirements, as long as the Federal Government retains ownership of the property. Deed transfers will only be made after the applicant has provided acceptable written proof that the proposed program is not in conflict with State or local zoning laws and restrictions, building codes, or similar limitations.

(b) *Scope of evaluations.* Due to the short time frame imposed by statute for evaluating applications, HHS's evaluation will, generally, be limited to the information contained in the application. It is therefore incumbent on applicants to provide thorough and complete applications.

(c) *Deadline for initial application.* An initial application must be received by HHS, at the email address in § 102–71.170(d)(1) or other address indicated by HHS, within 75 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may, in its discretion, grant extensions authorized by 42 U.S.C. 11411(e)(2)(A), provided that the appropriate landholding agency or GSA concurs with the extension.

(d) *Evaluation of initial application.* (1) Upon receipt of an initial application, HHS will review it for completeness, and, if incomplete and time permits, may, in its discretion, return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the initial application.

(2) HHS will evaluate each initial application within 10 days of receipt and will promptly advise the applicant of its decision. All initial applications will be reviewed on the basis of the following elements:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program, the program's ability to satisfy unmet needs of the community, and the degree to which the available property will be fully utilized.

(iii) *Experience.* Demonstrated ability to provide the services, such as prior success in operating similar programs and recommendations attesting to that

fact by Federal, State, and local authorities.

(e) *Deadline and evaluation of final application.* (1) If HHS approves an initial application, HHS will notify the applicant and provide the applicant 45 days in which to provide a final application. The final application shall set forth a reasonable plan to finance, as specified in paragraph (a)(6) of this section, the approved program as set forth in the initial application. Applicants may not modify the approved initial application within its final application proposal.

(2) Upon receipt of the final application, HHS will make a determination within 15 days and notify the applicant.

(3) Unlike with initial applications, requests for extensions are not authorized by 42 U.S.C. 11411 and thus will not be considered for final applications.

(4) Applications are evaluated on a first-come, first-served basis. HHS will notify all organizations that have submitted expressions of interest for a particular property whether an earlier application received for that property has been approved.

(f) *Competing applications.* If HHS receives more than one final application simultaneously, HHS will evaluate all applications and make a determination based on each application's merit. HHS will rank approved applications based on the elements listed in paragraph (a) of this section, and notify the landholding agency, or GSA, as appropriate, of the approved applicant.

§ 102–71.180 Action on approved applications

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available.

(ii) The terms and conditions of the lease or permit document (except that a landholding agency may not charge any fees or impose any costs).

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will notify the applicant and request that GSA assign the property to HHS for transfer. Requests to GSA for the assignment of surplus property to HHS for homeless assistance purposes will be based on the following conditions:

(i) HHS has a fully approved application for the property;

(ii) The applicant is able, willing, and authorized to assume immediate care, custody, and maintenance of the property;

(iii) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer; and

(iv) The applicant has secured the necessary funds, or has demonstrated the ability to obtain such funds, to carry out the approved program of use of the property.

(2) Upon receipt of an acceptable assignment, HHS will execute the transfer document in accordance with the procedures and requirements set out in this subpart and any other terms and conditions HHS and GSA determine are appropriate or necessary. Custody and accountability of the property will remain throughout the lease term with the landholding agency (*i.e.*, the agency which initially reported the property as excess) and throughout the deed term with the transferee.

(3) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs in deciding the disposition of surplus property. Priority of consideration will normally be given to uses to assist the homeless. However, both GSA and HHS may consider any competing request for the property made under 40 U.S.C. 550 that is so meritorious and compelling that it outweighs the needs of the homeless.

(4) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance, the agency making the decision will transmit to the appropriate committees of Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

§ 102–71.185 Surplus property transfer documents.

(a) Surplus property may be conveyed to eligible organizations pursuant to 40 U.S.C. 550(d) and 42 U.S.C. 11411, as amended, by lease or deed, at the applicant's discretion.

(b) Transfers of surplus property for homeless assistance purposes are in exchange for the transferee's agreement to fully utilize the property for homeless assistance purposes in accordance with the terms specified in the transfer document.

(c) A transfer of surplus property for homeless assistance purposes is subject to the disapproval of GSA within 30

days after notice is given to GSA of the proposed transfer.

(d) Surplus property transferred pursuant to this subpart will be disposed on an "as is, where is" basis without warranty of any kind except as may be stated in the transfer document.

(e) Unless excepted by GSA in its assignment, the disposal of property includes mineral rights associated with the surface estate.

(f) Transfers of surplus property under this subpart will be made with the following general terms and conditions:

(1) For the period provided in the transfer document, the transferee shall utilize all the surplus property it receives solely and continuously for the approved program and plan of use, in accordance with 42 U.S.C. 11411 and this subpart, except that:

(i) The transferee has 12 months from the date of transfer to place the surplus property into use, if HHS did not approve in writing, construction of new facilities or major renovation of the property when it approved the final application;

(ii) The transferee has 48 months from the date of transfer to place the surplus property into use, if the transferee proposes construction of new facilities or major renovation of the property and HHS approves it in writing at the time it approves the final application;

(iii) If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Federal Government for each month thereafter during which the proposed use has not been implemented or take such other action as set forth at § 102–71.205 as is deemed appropriate by HHS. Such monthly payments shall be computed on the basis of the current fair market value of the property, as conveyed, at the time of the first payment and dividing it by 360 months. At HHS's discretion, the payment may be waived if the transferee makes a sufficient showing of continued progress to place the property into use or if an unforeseeable event occurs which prevents the property from being put into use within the applicable timeframe; and

(iv) HHS may permit use of surplus property at any time during the period of restriction by an entity other than the transferee in accordance with § 102–71.210.

(2) The transferee will not be permitted to encumber, or dispose of the property, or impair full utilization thereof, without the prior written authorization of HHS. In the event the property is encumbered, sold, or disposed of, or is used for any purposes other than those set forth in an

approved plan without the written consent of HHS, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by HHS, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of HHS. The provisions of this paragraph (f)(2) shall not impair or affect the rights reserved to the United States in paragraph (f)(8) of this section, or the right of HHS to impose conditions to its consent.

(3) The transferee will file with HHS such reports on its maintenance and use of the surplus property and any other reports or information deemed necessary by HHS.

(4) The transferee shall pay all administrative costs incidental to the transfer, including but not limited to—transfer taxes; surveys; appraisals; title search; the transferee's legal fees; recordation expenses, etc. The transferee is solely responsible for such costs and may not seek reimbursement from the Federal Government for any reason.

(5) The transferee shall protect, preserve, maintain, and repair the property to ensure that the property remains in as good a condition as when received.

(6) The transferee shall protect the residual financial interest of the United States in the surplus property by insurance or such other means as HHS directs.

(7) The transferee shall abide by all applicable Federal civil rights laws including those specified in the covenants and conditions contained in the transfer document, prohibiting the transferee from discriminating on the basis of, including but not limited to, race, color, national origin, religion, sex, familial status, or disability in the use of the property.

(8) In the event of noncompliance with any conditions of the deed as determined by HHS, whether caused by the legal or other inability of the transferee, its successors and assigns, to perform any of the obligations of the transfer document, the Federal Government has an immediate right of reentry thereon, and to cause all right, title, and interest in and to the property to revert to the United States, and the transferee shall forfeit all right, title, and interest in and to the property. In such event, transferee shall execute a quitclaim deed and take all other actions necessary to return the property to the United States within ninety (90) days of a written request from the Federal Government, extended only at

the discretion of the Federal Government. Transferee shall cooperate with the United States in the event of a reversion and agrees that the United States need not seek judicial intervention before exercising its right to revert, reenter, and reconvey the property.

(9) In the event title is reverted to the United States for noncompliance or voluntarily reconveyed to the United States, the transferee shall, at the option of HHS, be required to: reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the transferee to adapt the property to the homeless use for which the property was transferred; and reimburse the United States for any costs incurred in reverting title to or possession of the property, including reasonable attorneys' fees.

(10) With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by HHS or the landholding agency, the right of occupancy and possession shall, at the option of HHS or the landholding agency, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required, at the option of HHS, to reimburse the United States for the decrease in value of the property not due to market conditions, reasonable wear and tear, acts of God, or approved alterations completed by the lessee to adapt the property to the homeless use for which the property was leased. With respect to any termination of leasehold resulting from noncompliance, the United States, shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering possession of the property, including reasonable attorneys' fees.

(11) Any other term or condition that HHS and GSA determine appropriate or necessary.

(12) With respect to surplus property transferred by deed, the terms and conditions including those in this paragraph (f), apply for a period of three hundred sixty (360) months of use in accordance with a program of use approved in writing by HHS. The three hundred sixty months (360) period may, in HHS's sole discretion, be extended or restarted in the event the property is not fully utilized or is retransferred to a successor entity. Expiration of the terms and conditions in this paragraph (f) does not release the transferee from continuing compliance, as appropriate, with any conditions that may run with

the land, *e.g.*, environmental conditions and/or historic preservation covenants. Such conditions will continue to be the responsibility of the transferee and successors.

(13) With respect to surplus property transferred by lease, the terms and conditions including those in this paragraph (f), extend for the entire initial lease and for any subsequent renewal periods, unless specifically excluded in writing by HHS.

(g) Related personal property may be transferred or leased as a part of the realty and in accordance with real property procedures.

(h) Transferees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the United States, the transferee will be responsible for removing improvements made to the property if directed to by the United States and, in such event, will be responsible for restoration of the property or the costs associated with restoring the property. If improvements made by the transferee are not voluntarily removed by the transferee and the United States consents, they will become the property of the United States. If the United States does not consent, the transferee shall reimburse the United States for reasonable costs of removal. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

(i) Transferees, by obtaining the written consent of HHS, may abrogate the restrictions set forth in paragraph (f) of this section for all or any portion of the property in accordance with the provisions of § 102–71.215.

§ 102–71.190 Unsuitable properties.

The landholding agency or GSA will defer action to dispose of properties determined unsuitable for homeless assistance for 20 days after the date that notice of a property is posted on the HUD website. HUD will inform landholding agencies or GSA if an appeal of an unsuitability determination is filed by a representative of the homeless pursuant to § 102–71.140(f). HUD will advise the agency to refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate landholding agency may proceed with disposal action in accordance with applicable law.

§ 102–71.195 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) HHS, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus property for homeless purposes, will act in accordance with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No lease to use surplus property shall allow the lessee to make, or cause to be made, any irreversible change in the conditions of said property, and no lease shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts, unless approved by the United States.

(b) Applicants shall be required to provide such information as HHS deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard questionnaire prescribed by HHS, as well as other relevant information, will be used by HHS in making said assessment.

(c) If the assessment reveals:

(1) That the proposed Federal action involved properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places; or

(2) That a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action; or

(3) That the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, HHS will, except as provided for in paragraph (d) of this section, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the Acts cited in paragraph (a) of this section.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, HHS may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the Acts cited in

paragraph (a) of this section. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between HHS and another Federal agency, HHS will reserve the right to abrogate the lead agency agreement with the other Federal agency.

§ 102–71.200 No applications approved.

(a) At the end of the 30-day holding period described in § 102–71.170(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a certain property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon notice from HHS that all applications have been disapproved, or if no initial applications have been received within 75 days after an expression of interest, or no final application has been received within 45 days after an approved initial application, disposal may proceed in accordance with applicable law.

§ 102–71.205 Utilization and enforcement.

(a) *Sanctions.* For instances of noncompliance relating to surplus property transfers, HHS may impose, after providing an opportunity to cure to the transferee, any or all of the following sanctions in its sole discretion, as applicable:

(1) Where property or any portion thereof was not used or is not being used for the purposes for which transferred, or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of HHS, HHS may require the transferee to—

(i) Place the property into immediate use for an approved purpose and extend the period of restriction in the transfer document for an additional term as determined by HHS;

(ii) Hold in trust all revenues and the reasonable value of other benefits received by the transferee directly or indirectly from that use for the United States subject to the direction and control of HHS;

(iii) Return title to such property to the United States or to relinquish any leasehold interest therein;

(iv) Abrogate the conditions and restrictions of the transfer, as set forth in § 102–71.215;

(v) Make cash payments to the United States, as directed by HHS, equivalent to the current fair market rental value of

the surplus property, as transferred, for each month during which the program and plan of use has not been implemented and continues to not be implemented; or

(vi) Any other remedy that HHS determines appropriate or necessary.

(2) Where the transferee desires to place the property into temporary use to assist the homeless other than that for which the property was transferred, written approval from HHS must be obtained, and will be conditioned upon HHS's authority to permit the use and such terms as HHS may impose.

(3) If HHS or the landholding agency determines that a lessee or sublessee of a transferee is in noncompliance with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, HHS may require termination of the lease and impose sanctions described in paragraph (a)(1) of this section, as appropriate.

(b) *Reversion.* When HHS recommends reversion of the property for noncompliance, HHS will seek GSA's concurrence. GSA will respond to HHS's concurrence request within 30 days of its receipt. If GSA concurs, GSA will work with HHS to complete the reversion of the property. If GSA does not concur to the reversion recommendation, GSA will issue, to HHS, a written determination: stating the reason(s) for the disapproval; and acknowledging that HHS has recommended reversion and, therefore, the property is no longer within HHS's Title V program. The Federal Government will implement a response to the noncompliance that is in its best interests.

§ 102–71.210 Other uses.

(a) A transferee may permit the use of all or a portion of the surplus property by another eligible entity as described in § 102–71.125 for homeless assistance purposes, only upon those terms and conditions HHS determines appropriate, if:

(1) The transferee submits a written request to HHS explaining the purpose of and need for another eligible entity's use of the property, program plan, and other relevant information requested by HHS;

(2) HHS determines that the proposed use would not substantially limit the program and plan of use by the transferee and that the use will not unduly burden the Federal Government;

(3) HHS's written consent is obtained by the transferee in advance;

(4) HHS approves the use instrument in advance and in writing;

(5) The transferee agrees to lengthen the period of restrictions as determined by HHS; and

(6) HHS advises GSA and there is no disapproval by GSA within thirty (30) days.

(b) A transferee that does not follow paragraph (a) of this section will be deemed to be not in compliance with the terms and conditions of the Title V program and subject to enforcement action, including reversion of the property.

§ 102–71.215 Abrogation.

(a) HHS may abrogate the conditions and restrictions in the transfer document if:

(1) The transferee submits to HHS a written request that HHS abrogate the conditions and restrictions in the transfer document as to all or any portion of the surplus property;

(2) HHS determines the terms and conditions of the proposed abrogation and determines that the proposed abrogation is in the best interest of the United States; and

(3) HHS transmits the abrogation request to GSA and there is no disapproval by GSA within 30 days after notice is given. If GSA disapproves, GSA will state, in writing, to HHS the reason(s) for the disapproval.

(b) HHS abrogates the conditions and restrictions in the transfer document only upon receipt of the appropriate consideration, including cash payment, to the United States, as directed by HHS, which is based on the formula contained in the transfer document, and any other terms and conditions HHS deems appropriate to protect the interest of the United States.

§ 102–71.220 Compliance inspections and reports.

Transferees are required to allow HHS to conduct compliance inspections and to submit such compliance reports and actions as are deemed necessary by HHS. At a minimum, the transferee will be required to submit an annual utilization report regarding the operation and maintenance of the property, including current images of the entire property and such information as HHS shall require.

§ 102–71.225 No right of administrative review for agency decisions.

There is no right to administrative review within HHS, including requests for reconsideration or appeal, of agency decisions on applications and other discretionary decisions.

§ 102–71.230 Waivers.

The Secretary of HUD may waive any requirement of this subpart (over which

the Secretary of HUD has jurisdiction) that is not required by law, whenever it is determined that undue hardship would result from applying the requirement, or where application of the requirement would adversely affect the purposes of the program. Each waiver will be in writing and will be supported by documentation of the pertinent facts and grounds. The Secretary periodically will publish notices of granted waivers on the HUD website.

§ 102–71.235 Severability.

Any provision of this subpart held to be invalid or unenforceable with respect to certain parties or circumstances shall be construed so as to continue to give the maximum effect to the provision permitted by law unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

PARTS 102–72 and 102–73— [REMOVED AND RESERVED]

■ 14. Under the authority of 40 U.S.C. 121(c), remove and reserve parts 102–72 and 102–73.

■ 15. Revise part 102–74 to read as follows:

PART 102–74—FACILITY MANAGEMENT

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Conduct on Federal Property

Applicability

Sec.

102–74.365 To whom does this subpart apply?

Inspection

102–74.370 What items are subject to inspection by Federal agencies?

Admission to Property

102–74.375 What is the policy on admitting persons to Government property?

Preservation of Property

102–74.380 What is the policy concerning the preservation of property?

Conformity With Signs and Directions

102–74.385 What is the policy concerning conformity with official signs and directions?

Disturbances

102–74.390 What is the policy concerning disturbances?

Gambling

102–74.395 What is the policy concerning gambling?

Narcotics and Other Drugs

102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Alcoholic Beverages

102–74.405 What is the policy concerning the use of alcoholic beverages?

Soliciting, Vending, and Debt Collection

102–74.410 What is the policy concerning soliciting, vending, and debt collection?

Posting and Distributing Materials

102–74.415 What is the policy for posting and distributing materials?

Photographs for News, Advertising, or Commercial Purposes

102–74.420 What is the policy concerning photographs for news, advertising, or commercial purposes?

Dogs and Other Animals

102–74.425 What is the policy concerning dogs and other animals on Federal property?

Breastfeeding

102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

Vehicular and Pedestrian Traffic

102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

Explosives

102–74.435 What is the policy concerning explosives on Federal property?

Weapons

102–74.440 What is the policy concerning weapons on Federal property?

Nondiscrimination

102–74.445 What is the policy concerning discrimination on Federal property?

Penalties

102–74.450 What are the penalties for violating any rule or regulation in this subpart?

Impact on Other Laws or Regulations

102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

Appendix A to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

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

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Conduct on Federal Property

Applicability

§ 102–74.365 To whom does this subpart apply?

The rules in this subpart apply to all property under the authority of the

General Services Administration (GSA) and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of the rules and regulations in this subpart. Federal agencies must post the notice in appendix A to this part at each public entrance to each Federal facility.

Inspection

§ 102–74.370 What items are subject to inspection by Federal agencies?

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

Admission to Property

§ 102–74.375 What is the policy on admitting persons to Government property?

Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for authorized activities, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in § 102–71.10 of this chapter as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of this subpart.

Preservation of Property

§ 102–74.380 What is the policy concerning the preservation of property?

All persons entering in or on Federal property are prohibited from—

- (a) Improperly disposing of rubbish on property;
- (b) Willfully destroying or damaging property;
- (c) Stealing property;
- (d) Creating any hazard on property to persons or things; or
- (e) Throwing articles of any kind from or at a building or climbing upon statues, fountains, or any part of the building.

Conformity With Signs and Directions

§ 102–74.385 What is the policy concerning conformity with official signs and directions?

Persons in and on property must at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

Disturbances

§ 102–74.390 What is the policy concerning disturbances?

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct, or exhibiting other conduct on property that—

- (a) Creates loud or unusual noise or a nuisance;
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- (c) Otherwise impedes or disrupts the performance of official duties by Government employees; or
- (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

Gambling

§ 102–74.395 What is the policy concerning gambling?

(a) Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

- (1) Participating in games for money or other personal property;
- (2) Operating gambling devices;
- (3) Conducting a lottery or pool; or
- (4) Selling or purchasing numbers tickets.

(b) This section is not intended to prohibit prize drawings for personal property at otherwise permitted functions on Federal property, provided that the game or drawing does not constitute gambling *per se*. *Gambling per se* means a game of chance where the participant risks something of value for the chance to gain or win a prize.

Narcotics and Other Drugs

§ 102–74.400 What is the policy concerning the possession and use of narcotics and other drugs?

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

- (a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or
- (b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

Alcoholic Beverages

§ 102–74.405 What is the policy concerning the use of alcoholic beverages?

Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

Soliciting, Vending, and Debt Collection

§ 102–74.410 What is the policy concerning soliciting, vending, and debt collection?

All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for—

- (a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR part 950 and sponsored or approved by the occupant agencies;
- (b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454);

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities as approved per a written permit;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

Posting and Distributing Materials

§ 102–74.415 What is the policy for posting and distributing materials?

All persons entering in or on Federal property are prohibited from—

(a) Distributing free samples of tobacco products in or around Federal buildings, as mandated by section 636 of Public Law 104–52;

(b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in § 102–74.410, or when these displays are conducted as part of authorized Government activities; and

(c) Distributing materials, such as pamphlets, handbills or flyers, unless conducted as part of authorized Government activities. This paragraph (c) does not apply to public areas of the property as defined in § 102–71.10 of this chapter. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager. Any such person or organization must distribute materials only in accordance with the written and approved permit provisions. Failure to comply with this paragraph (c) is a violation of this section.

Photographs for News, Advertising, or Commercial Purposes

§ 102–74.420 What is the policy concerning photographs for news, advertising, or commercial purposes?

Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

(a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

(b) Space occupied by a tenant agency for commercial purposes only with

written permission of an authorized official of the occupying agency concerned; and

(c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

Dogs and Other Animals

§ 102–74.425 What is the policy concerning dogs and other animals on Federal property?

No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

Breastfeeding

§ 102–74.426 May a woman breastfeed her child in a Federal building or on Federal property?

Yes. Public Law 108–199, section 629, division F, title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

Vehicular and Pedestrian Traffic

§ 102–74.430 What is the policy concerning vehicular and pedestrian traffic on Federal property?

All vehicle drivers entering or while on Federal property—

(a) Must drive in a careful and safe manner at all times;

(b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as this section;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of this section or directives as *prima facie* evidence that the registered owner was responsible for the violation.

Explosives

§ 102–74.435 What is the policy concerning explosives on Federal property?

No person entering or while on Federal property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

Weapons

§ 102–74.440 What is the policy concerning weapons on Federal property?

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

Nondiscrimination

§ 102–74.445 What is the policy concerning discrimination on Federal property?

Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Penalties

§ 102–74.450 What are the penalties for violating any rule or regulation in this subpart?

A person found guilty of violating any rule or regulation in this subpart while on any property under the charge and control of GSA shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

Impact on Other Laws or Regulations

§ 102–74.455 What impact do the rules and regulations in this subpart have on other laws or regulations?

No rule or regulation in this subpart may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

Appendix A to Part 102–74—Rules and Regulations Governing Conduct on Federal Property

Federal Management Regulations

Title 41, Code of Federal Regulations, Part 102–74, Subpart C

Applicability (41 CFR 102–74.365).

The rules in 41 CFR part 102–74, subpart C, apply to all property under the authority of the U.S. General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of the rules and regulations in subpart C. Federal agencies must post the notice in appendix A to part 102–74 at each public entrance to each Federal facility.

Inspection (41 CFR 102–74.370).

Federal agencies may, at their discretion, inspect packages, briefcases and other containers in the immediate possession of visitors, employees or other persons arriving on, working at, visiting, or departing from Federal property. Federal agencies may conduct a full search of a person and the vehicle the person is driving or occupying upon his or her arrest.

Admission to Property (41 CFR 102–74.375). Federal agencies must—

(a) Except as otherwise permitted, close property to the public during other than normal working hours. In those instances where a Federal agency has approved the after-normal-working-hours use of buildings or portions thereof for authorized activities, Federal agencies must not close the property (or affected portions thereof) to the public;

(b) Close property to the public during working hours only when situations require this action to provide for the orderly conduct of Government business. The designated official under the Occupant Emergency Program may make such decision only after consultation with the buildings manager and the highest ranking representative of the law enforcement organization responsible for protection of the property or the area. The designated official is defined in 41 CFR 102–71.10 as the highest ranking official of the primary occupant agency, or the alternate highest ranking official or designee selected by mutual agreement by other occupant agency officials; and

(c) When property or a portion thereof is closed to the public, restrict admission to the property, or the affected portion, to authorized persons who must register upon entry to the property and must, when requested, display Government or other identifying credentials to Federal police officers or other authorized individuals when

entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of 41 CFR 102–74.375.

Preservation of Property (41 CFR 102–74.380). All persons entering in or on Federal property are prohibited from—

- (a) Improperly disposing of rubbish on property;
- (b) Willfully destroying or damaging property;
- (c) Stealing property;
- (d) Creating any hazard on property to persons or things; and
- (e) Throwing articles of any kind from or at a building or the climbing upon statues, fountains, or any part of the building.

Conformity with Signs and Directions (41 CFR 102–74.385). Persons in and on property must at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the lawful direction of Federal police officers and other authorized individuals.

Disturbances (41 CFR 102–74.390). All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct, or exhibiting other conduct on property that—

- (a) Creates loud or unusual noise or a nuisance;
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- (c) Otherwise impedes or disrupts the performance of official duties by Government employees; or
- (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

Gambling (41 CFR 102–74.395). Except for the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*), all persons entering in or on Federal property are prohibited from—

- (a) Participating in games for money or other personal property;
- (b) Operating gambling devices;
- (c) Conducting a lottery or pool; or
- (d) Selling or purchasing numbers tickets.

Narcotics and Other Drugs (41 CFR 102–74.400). Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on Federal property are prohibited from—

- (a) Being under the influence, using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or

- (b) Operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines.

Alcoholic Beverages (41 CFR 102–74.405). Except where the head of the responsible agency or his or her designee has granted an exemption in writing for the appropriate official use of alcoholic beverages, all persons entering in or on Federal property are prohibited from being under the influence or using alcoholic beverages. The head of the responsible agency or his or her designee must provide a copy of all exemptions granted to the buildings manager and the highest ranking representative of the law enforcement organization, or other authorized officials, responsible for the security of the property.

Soliciting, Vending, and Debt Collection (41 CFR 102–74.410). All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations; vending merchandise of all kinds; displaying or distributing commercial advertising, or collecting private debts, except for—

- (a) National or local drives for funds for welfare, health or other purposes as authorized by 5 CFR part 950 and sponsored or approved by the occupant agencies;
- (b) Concessions or personal notices posted by employees on authorized bulletin boards;
- (c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Public Law 95–454);

- (d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 581(h)). Public areas of GSA-controlled property may be used for other activities authorized in writing;

- (e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

- (f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

Posting and Distributing Materials (41 CFR 102–74.415). All persons entering in or on Federal property are prohibited from—

- (a) Distributing free samples of tobacco products in or around Federal buildings, under Public Law 104–52, section 636;

- (b) Posting or affixing materials, such as pamphlets, handbills, or flyers, on bulletin boards or elsewhere on GSA-controlled property, except as authorized in 41 CFR 102–74.410, or when these displays are conducted as part of authorized Government activities; and

- (c) Distributing materials, such as pamphlets, handbills, or flyers, unless conducted as part of authorized Government activities. This prohibition does not apply to public areas of the property as defined in 41 CFR 102–71.10. However, any person or organization proposing to distribute materials in a public area under this section must first obtain a permit from the building manager. Any such person or organization must distribute materials only in accordance with the provisions of the permit. Failure to comply with those provisions is a violation of 41 CFR 102–74.415.

Photographs for News, Advertising, or Commercial Purposes (41 CFR 102–74.420). Except where security regulations, rules, orders, or directives apply or a Federal court order or rule prohibits it, persons entering in or on Federal property may take photographs of—

- (a) Space occupied by a tenant agency for non-commercial purposes only with the permission of the occupying agency concerned;

- (b) Space occupied by a tenant agency for commercial purposes only with written permission of an authorized official of the occupying agency concerned; and

- (c) Building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

Dogs and Other Animals (41 CFR 102–74.425). No person may bring dogs or other animals on Federal property for other than official purposes. However, a disabled person may bring a seeing-eye dog, a guide dog, or other animal assisting or being trained to assist that individual.

Breastfeeding (41 CFR 102–74.426). Public Law 108–199, section 629, division F, title VI (January 23, 2004), provides that a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.

Vehicular and Pedestrian Traffic (41 CFR 102–74.430). All vehicle drivers entering or while on Federal property—

- (a) Must drive in a careful and safe manner at all times;

- (b) Must comply with the signals and directions of Federal police officers or other authorized individuals;

(c) Must comply with all posted traffic signs;

(d) Must comply with any additional posted traffic directives approved by the GSA Regional Administrator, which will have the same force and effect as 41 CFR 102–74.430;

(e) Are prohibited from blocking entrances, driveways, walks, loading platforms, or fire hydrants; and

(f) Are prohibited from parking on Federal property without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, are subject to removal at the owner's risk and expense. Federal agencies may take as proof that a motor vehicle was parked in violation of 41 CFR 102–74.430 or directives as *prima facie* evidence that the registered owner was responsible for the violation.

Explosives (41 CFR 102–74.435). No person entering or while on property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

Weapons (41 CFR 102–74.440). Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

Nondiscrimination (41 CFR 102–74.445). Federal agencies must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Penalties (41 CFR 102–74.450). A person found guilty of violating any rule or regulation in subpart C of this part while on any property under the charge and control of the U.S. General Services Administration shall be fined under title 18 of the United States Code, imprisoned for not more than 30 days, or both.

Impact on Other Laws or Regulations (41 CFR 102–74.455). No rule or regulation in 41 CFR part 102–74, subpart C, may be construed to nullify any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (40 U.S.C. 121 (c)).

Warning—Weapons Prohibited

Federal law prohibits the possession of firearms or other dangerous weapons in Federal facilities and Federal court facilities by all persons not specifically authorized by 18 U.S.C. 930. Violators will be subject to fine and/or imprisonment for periods up to five (5) years.

PARTS 102–75 THROUGH 102–83 AND 102–85 [REMOVED AND RESERVED]

■ 16. Under the authority of 40 U.S.C. 121(c), remove and reserve parts 102–75 through 102–83 and 102–85.

■ 17. Revise part 102–117 to read as follows:

PART 102–117—TRANSPORTATION MANAGEMENT

Subpart A—General

Sec.

102–117.5 Applicable entities and exemptions.

102–117.10 Definitions.

Subpart B—Acquiring Transportation or Related Services

102–117.15 Procurement options.

102–117.20 Procurement requirement.

102–117.25 Mandatory terms and conditions.

102–117.30 Rate reference.

102–117.35 Required shipping documents.

Subpart C—Other Laws

102–117.40 International transportation.

102–117.45 Exceptions.

102–117.50 Coastwise laws.

Subpart D—Shipping Categories

102–117.55 Procurement requirements.

102–117.60 Process.

102–117.65 Determine mode.

102–117.70 Property description.

102–117.75 Documentation.

102–117.80 Document reporting and retention.

102–117.85 Filing damage claims.

102–117.90 TSP's liability for HHG loss or damage claims.

102–117.95 Agency responsibilities after shipping HHG.

102–117.100 HAZMAT restrictions.

Subpart E—Transportation Service Provider (TSP) Performance

102–117.105 TSP performance expectations.

102–117.110 Corrective options.

102–117.115 Corrective option differences.

Subpart F—Representation Before Regulatory Body Proceedings

102–117.120 Appearance before a regulatory body.

102–117.125 Other assistance by GSA.

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.*; 46 U.S.C. 55305; 49 U.S.C. 40118.

Subpart A—General

§ 102–117.5 Applicable entities and exemptions.

(a) This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101, *et seq.*, and 31 U.S.C. 9101(3), unless exempt.

(b) Exemptions include:

(1) The Department of Defense in accordance with the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 501 *et seq.*).

(2) Uniformed service members, under title 37 of the United States Code, including the U.S. Coast Guard, National Oceanic and Atmospheric Administration, and the Public Health Service are exempt from the household goods shipping requirements in this part.

§ 102–117.10 Definitions.

The following definitions apply to this part:

Accessorial charges means charges that are applied to the base tariff rate or base contract of carriage rate.

Agency means a department, agency, and independent establishment in the executive branch of the Government as defined in 5 U.S.C. 101 *et seq.*, and a wholly owned Government corporation as defined in 31 U.S.C. 9101(3).

Best value means selecting the shipping option that offers the most benefit to the government considering mode, cost, reliability, and service quality.

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), is a transportation document that can be issued by either the agency or the TSP. It serves multiple purposes as a receipt of goods, contract of carriage, and evidence of title. It also specifies contract terms and conditions, and is mandatory for all shipments. The TSP must comply with applicable Federal regulations, specifically this part and 41 CFR part 102–118.

Cargo preference is the legal requirement for all, or a portion of all, ocean-borne cargo that moves internationally to be transported on U.S. flag vessels.

Coastwise laws govern waterborne shipments between U.S. points or territories to ensure reliable service and maintain maritime readiness during war or national emergencies.

Consignee is the person or agent to whom freight or household goods are delivered.

Consignor, also referred to as the shipper, is the person or firm that ships

freight or household goods to a consignee.

Contract of carriage is a contract between the TSP and the agency to transport freight or household goods.

Debarment is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any Federal Acquisition Regulation (FAR) contract.

Declared value means the actual value of cargo as declared by the agency for reimbursement purposes or to establish duties, taxes, or other customs fees.

Freight is property or goods transported as cargo.

Government bill of lading (GBL), Standard Form (SF) 1103, is a Government issued bill of lading.

Hazardous material (HAZMAT) is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*). All such freight must be marked in accordance with applicable regulations and the carrier must be notified in advance.

Household goods (HHG) are the personal effects of Government employees and their dependents.

Mode is a method of transportation, such as rail, road, air, water, or pipeline.

Rate tender is an offer a TSP sends to an agency, containing service rates and charges.

Receipt is a written or electronic acknowledgment by the consignee or TSP as to when and where a shipment was received.

Suspension is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a FAR contract or rate tender.

Transportation is the movement of goods and all related services, including the use of motor vehicles, vessels, warehouses, and necessary equipment, as well as associated activities such as storage, handling, packing, delivery, and receipt.

Transportation management is agency oversight of the physical movement of commodities, HHG, small packages, cargo and other freight from one location to another by a TSP including related services such as warehousing.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

U.S. flag air carrier is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49 U.S.C. 40118).

U.S. flag vessel is a commercial vessel, registered and operated under the laws of the U.S., owned and operated by U.S. citizens, and used in commercial trade of the United States.

Subpart B—Acquiring Transportation or Related Services

§ 102–117.15 Procurement options.

Agency procurement options are:

(a) Use a General Services Administration (GSA) tender of service:

(1) Freight—Standard Tender of Service (STOS).

(2) HHG—Household Goods Tender of Service (HTOS).

(b) Issue a FAR contract if permitted by statute or authorized by GSA.

(c) Using another agency's contract or rate tender if permitted by statute or if GSA has issued a delegation of authority allowing other agencies to use the rate tender or contract.

(d) In consultation with GSA, negotiate a rate tender under a Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

§ 102–117.20 Procurement requirement.

GSA leverages the Federal Government's collective buying power to procure transportation services at reduced rates. It uses standardized agreements to ensure consistency and protect the government's interests. Therefore, agencies subject to this FMR part must select an option provided in § 102–117.15 to procure transportation.

§ 102–117.25 Mandatory terms and conditions.

All rate tenders and contracts must include, at a minimum, the following terms and conditions:

(a) Charges cannot be prepaid.
(b) Charges are not paid at time of delivery.

(c) Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

(d) To qualify for the rates specified in a rate tender filed under the provisions of the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712), property must be shipped by or for the Government and the rate tender must indicate the Government is either the consignor or the consignee.

(e) Using a rate tender for transportation in a cost-reimbursable contract, requires the following statement in the rate tender:

Transportation is for the (agency name), and the actual total transportation charges

paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).

(f) Other terms and conditions that may be specific to the agency or the shipment such as specialized packaging requirements or HAZMAT.

(g) The TSP must comply with all the conditions of the contract or tender and the appropriate requirements of this part and 41 CFR part 102–118.

§ 102–117.30 Rate reference.

Agencies must include the rate tender, tariff, or contract number on the BOL to ensure the BOL is correctly audited prior to payment.

§ 102–117.35 Required shipping documents.

Bills of lading and purchase orders are required to acquire freight, household goods shipments, and other transportation services.

Subpart C—Other Laws

§ 102–117.40 International transportation.

Federal law requires using U.S. flag carriers for international air and ocean shipments. Key statutes include:

(a) Fly America Act (49 U.S.C. 40118)—requires use of U.S. air carriers when available.

(b) Cargo Preference Act (46 U.S.C. 55305)—requires that at least 50% of U.S. Government-impelled ocean cargo be transported on U.S. flag vessels.

§ 102–117.45 Exceptions.

(a) Fly-America Act. Shippers may use a foreign-flag carrier only when:

- (1) No U.S. flag carrier service is available;
- (2) Emergency or mission-critical time constraints require foreign service;
- (3) A bilateral/multilateral air transport agreement permits it;
- (4) Transportation costs are fully reimbursed by a third party; or
- (5) Using a U.S. carrier would create an unreasonable safety risk, supported by appropriate agency documentation.

(b) Detailed Fly America exemptions are published separately by GSA. Refer to GSA's Transportation Policy web page guidance for the latest criteria. See <https://www.gsa.gov/policy-regulations/policy/transportation-management-policy>.

(c) Maritime Administration (MARAD). See <https://www.maritime.dot.gov/ports/cargo-preference/cargo-preference> for exceptions and determinations of non-availability.

§ 102–117.50 Coastwise laws.

(a) Coastwise laws (46 U.S.C. chapter 551) require the use of U.S.-flag, coastwise-endorsement vessels for domestic water shipments between U.S. ports.

(b) For exceptions and further information, refer to regulations issued by the U.S. Customs and Border Protection (CBP) (19 CFR 4.80) and MARAD.

Subpart D—Shipping Categories**§ 102–117.55 Procurement requirements.**

Select a transportation method in § 102–117.15. (See Federal Travel Regulation (FTR), 41 CFR chapter 302, subchapter D, for additional information regarding HHG.)

§ 102–117.60 Process.

Use the following shipping process:

(a) For shipments, it is required to—
(1) Identify what is being shipping;
(2) Decide if the cargo is HAZMAT, classified, or sensitive that may require special handling or placards;

(3) Select the most efficient and cost effective mode;

(4) Select an acquisition method from § 102–117.15;

(5) Consider all costs associated with the shipment including accessorial charges, surcharges, customs fees, etc.;

(6) Select the most efficient and economical TSP that gives the best value;

(7) Demonstrate no preferential treatment to any TSP when arranging for transportation services except on international shipments (International shipments must be given to United States registered commercial vessels and aircraft.);

(8) Prepare shipping documents; and
(9) Schedule pickup, ensure prompt delivery with a fully executed receipt, and oversee shipment.

(b) For international shipments, follow all requirements of paragraph (a) of this section and international requirements in § 102–117.40.

§ 102–117.65 Determine mode.

Shipping urgency, origin, destination, and any special handling requirements determine which mode of transportation is selected. Each mode has unique requirements for documentation, liability, size, weight, and delivery time. HAZMAT, radioactive, and other specialized cargo may require special permits which may limit choices.

§ 102–117.70 Property description.

Describe property in enough detail for the TSP to determine the type of equipment or any special precautions necessary to move the shipment including, the cargo's declared value,

weight, volume, measurements, routing, hazardous cargo, or special handling designations.

§ 102–117.75 Documentation.

Shipping—

(a) By land (domestic shipments), use a bill of lading;

(b) By land (international shipments), use of the optional GBL is permitted but not required;

(c) By ocean, use an ocean bill of lading, when suitable, along with the GBL (only for door-to-door movements); and

(d) By air, use a bill of lading.

§ 102–117.80 Document reporting and retention.

(a) Agencies must maintain all transportation documents in accordance with the General Records Schedules.

(b) For all shipments subject to cargo preference laws a copy of the ocean carrier's bill of lading, showing all freight charges, must be sent to MARAD within 20 working days of the date of loading for shipments originating in the United States, the District of Columbia, its territories or possessions and within 30 working days for shipments originating outside the United States, the District of Columbia, its territories or possessions.

§ 102–117.85 Filing damage claims.

File a claim for loss or damage to property with the TSP. Refer to 41 CFR part 102–118 for more information regarding statutory time limits to file administrative claims or judicial actions against a TSP.

§ 102–117.90 TSP's liability for HHG loss or damage claims.

Regarding the TSP's liability for loss or damage claims, agencies must—

(a) Advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance;

(b) Inform the employee about the procedures to file claims for loss and damage to HHG with the TSP; and

(c) Counsel employees who have a loss or damage to their HHG that exceeds the amount recovered from a TSP on procedures for filing a claim against the Government for the difference. Agencies may compensate employees up to \$40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723.

§ 102–117.95 Agency responsibilities after shipping HHG.

(a) Each agency develops an evaluation survey for the employee to complete following the move.

(b) When using GSA's Centralized Household Goods Traffic Management Program (CHAMP), agencies must instruct the employee to complete their portion of the GSA Form 3080, Household Goods Carrier Evaluation Report, using the link provided by the TSP.

§ 102–117.100 HAZMAT restrictions.

The Secretary of Transportation prescribes regulations for the safe transport of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. International, State, and local government rules and regulations also apply to HAZMAT shipments.

Subpart E—Transportation Service Provider (TSP) Performance**§ 102–117.105 TSP performance expectations.**

Agencies are required to ensure that TSPs deliver consistent, satisfactory service that meets their transportation needs. At a minimum, monitor—

- (a) On-time delivery rates;
- (b) Accuracy of billing, including overcharges or undercharges;
- (c) Frequency of claims filed;
- (d) Shipment rejection rates; and
- (e) Responsiveness to shipment tracing requests.

§ 102–117.110 Corrective options.

Decisions regarding temporary nonuse, suspension, or debarment are made by the agency, following procedures outlined in the FAR in title 48 of the Code of Federal Regulations and other applicable regulations. Agencies must maintain records of these actions and notify relevant parties as required.

§ 102–117.115 Corrective option differences.

(a) *Temporary nonuse.* Temporarily excluding the TSP from receiving new shipments (agencywide).

(b) *Suspension.* Temporarily disqualifying the TSP from Government contracts pending investigation (Governmentwide).

(c) *Debarment.* Permanently disqualifying the TSP from Government contracts due to serious misconduct (Governmentwide).

Subpart F—Representation Before Regulatory Body Proceedings**§ 102–117.120 Appearance before a regulatory body.**

No executive agency may appear on its own behalf in any proceeding before

a transportation regulatory body, unless the Administrator of General Services delegates his or her authority under 40 U.S.C. 501(c)(1)(B) to the agency. Send a request, via email, with enough detail to explain the circumstances surrounding the need for a delegation of authority for representation to *GSA-OGP-Transportationpolicy@gsa.gov*.

§ 102–117.125 Other assistance by GSA.

(a) Oversees all public utilities used by the Federal Government including transportation. There are specific regulatory requirements a TSP must meet at the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) Maintains a list of TSPs which meet certain criteria regarding insurance and safety and are approved by the Department of Transportation. Agencies must furnish GSA with an affidavit to determine if the TSP meets basic qualifications to protect the Government's interest. For further information email *transportation.programs@gsa.gov*.

(c) Represents agencies in negotiations with TSPs.

■ 18. Revise part 102–118 to read as follows:

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

Subpart A—General

Sec.

- 102–118.5 Objective.
- 102–118.10 Applicable entities.
- 102–118.15 Definitions.

Subpart B—Ordering and Paying for Transportation

- 102–118.20 Ordering transportation.
- 102–118.25 TSP billing.
- 102–118.30 Electronic payment processing.
- 102–118.35 Improper payments.
- 102–118.40 Payment procedures.
- 102–118.45 Billing and payment.
- 102–118.50 Government contractor issued charge cards.

Forms and Documents

- 102–118.55 Forms.
- 102–118.60 SF 1113.
- 102–118.65 GBL/GTR.
- 102–118.70 Other TDs.
- 102–118.75 Exceptions.
- 102–118.80 BOL mandatory terms.
- 102–118.85 Travel document mandatory terms.
- 102–118.90 Supplemental bills.
- 102–118.95 Prompt payment.

Subpart C—Billing Documents

- 102–118.100 Contract requirements.
- 102–118.105 TSP submissions.
- 102–118.110 BOL limitations.
- 102–118.115 Extra fees for the preparation and use of the GBL or GTR.
- 102–118.120 Final receipt.

Agency Responsibilities—GBLs and GTRs

- 102–118.125 Controlling GBL and GTR forms.

Subpart D—Audit of Transportation Services

- 102–118.130 Audit requirement.
- 102–118.135 Audit choices.
- 102–118.140 Audit program considerations.
- 102–118.145 Auditing methods.
- 102–118.150 Requirement to audit.
- 102–118.155 Records.
- 102–118.160 Billing adjustments.
- 102–118.165 Appeals process.
- 102–118.170 Disputes.
- 102–118.175 Agency certifying and disbursing officers.

Subpart E—Claims and Appeal Procedures

- 102–118.180 TSP files a claim.
- 102–118.185 TSP time limit to file a transportation claim.
- 102–118.190 Time limits on Government court claims against TSPs.
- 102–118.195 Interest on claims.
- 102–118.200 TSP files a claim against an agency.
- 102–118.205 Agency settles disputes.
- 102–118.210 Agency decision deadline.
- 102–118.215 Agency appeals a decision by the CBCA.
- 102–118.220 Debt collection rules.

TSP Filing Information and Requirements

- 102–118.225 Filing supplemental claims.
- 102–118.230 TSP challenges a statement of difference.
- 102–118.235 TSP disagrees with the agency's decision.
- 102–118.240 Appeals of a CBCA audit decision.
- 102–118.245 Agency appeals a CBCA prepayment audit decision.
- 102–118.250 Interest applicability.
- 102–118.255 Claim on collection actions.
- 102–118.260 CBCA time limits.

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.*; 46 U.S.C. 55305; 49 U.S.C. 40118.

Subpart A—General

§ 102–118.5 Objective.

The purpose of this part is to interpret statutes and other policies that assure that payment and payment mechanisms for agency transportation services are uniform and appropriate. This part communicates the policies clearly to agencies and transportation service providers (TSPs). (See § 102–118.15 for the definition of TSP.)

§ 102–118.10 Applicable entities.

This part applies to all agencies (including the Department of Defense (DoD)) and TSPs defined in § 102–118.15, and wholly owned Government corporations as defined in 31 U.S.C. 101, *et seq.*, and 31 U.S.C. 9101(3). Agencies are required to incorporate this part into their internal regulations.

§ 102–118.15 Definitions.

The following definitions apply to this part:

Agency means a department, agency, or instrumentality of the United States Government (31 U.S.C. 101).

Bill of lading (BOL), sometimes referred to as a commercial bill of lading, but includes a Government bill of lading (GBL), is a transportation document that can be issued by either the agency or the TSP. It serves multiple purposes as a receipt of goods, contract of carriage, and evidence of title. It also specifies contract terms and conditions, and is mandatory for all shipments. The TSP must comply with applicable Federal regulations, specifically 41 CFR part 102–117 and this part.

Civilian Board of Contract Appeals (CBCA) means an independent court within GSA that settles transportation payment claims disputes between Federal agencies and TSPs. For additional information on the CBCA see <https://www.cbca.gov/index.html>.

Claim means—

(1) Any demand by an agency upon a TSP for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest; or

(2) Any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was audited by the agency.

Document reference number (DRN) means the unique number on a BOL, Government Transportation Request (GTR), or transportation ticket used to track the movement of shipments and individuals.

Electronic funds transfer (EFT) means any transfer of funds, other than transactions initiated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Government bill of lading (GBL) means the transportation document used as a receipt of goods, evidence of title, and a contract of carriage for Government international shipments (see bill of lading (BOL) definition in this section).

Government contractor issued charge card means an individually billed travel card or an agency purchase card.

Government Transportation Request (GTR) (Optional Form (OF) 1169) means

a Government document used to procure passenger transportation services from a TSP. The document obligates the Government to pay for transportation services provided and is used when a Government contractor issued charge card is not accepted by the TSP.

Individually billed travel card means the charge card used by authorized individuals to pay for official travel and transportation related expenses for which the contractor bills the employee. This is different from a centrally billed account paying for official travel and transportation related expenses for which the agency is billed.

Offset means withholding money from a payment. In this part, money withheld refers to the funds owed a TSP that are not released by the agency but instead used to repay the Government for a debt incurred by the TSP.

Ordinary debt means an amount that a TSP owes an agency other than for the repayment of an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not provided (including unused transportation tickets), duplicate payments, and amounts for which a TSP is liable because of loss and/or damage to property it transported.

Overcharge means those charges for transportation that exceed those applicable under the executed agreement for services such as BOL (including a GBL, contract, rate tender or a GTR).

Postpayment audit means an audit of transportation billing documents, and all related transportation documents after payment, to decide their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders. The audit process may also include subsequent adjustments and collection actions taken against a TSP by the Government (31 U.S.C. 3726).

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity of rates with tariffs, quotations, agreements, contracts, or tenders (31 U.S.C. 3726).

Privately Owned Personal Property Government Bill of Lading means the agency transportation document used as a receipt of goods, evidence of title, and generally a contract of carriage. It is only available for the transportation of household goods. Use of this form is mandatory for the Department of Defense, but optional for other agencies.

Refund means the amount collected from outside sources for payments made in error, overpayment, or adjustments for previous amounts disbursed.

Standard Carrier Alpha Code (SCAC) is a unique code, typically two to four characters, used to identify transportation companies.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when it has been determined that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction. This can be an electronic process.

Supplemental bill means the bill for services that the TSP submits to the agency for additional payment of the services provided.

Taxpayer identification number (TIN) means the number required by the Internal Revenue Service to be used by the TSP in reporting income tax or other returns. For a TSP, the TIN is an employer identification number.

Transportation means service involved in the physical movement (from one location to another) of people, household goods, and freight by a TSP or a Third Party Logistics (3PL) entity for an agency, as well as activities directly relating to or supporting that movement. These activities are defined in 49 U.S.C. 13102.

Transportation audit is a thorough review and validation of transportation related documents and bills. The audit must examine the validity, propriety, and conformity of the charges or rates with tariffs, quotations, contracts, agreements, or tenders, as appropriate.

Transportation document (TD) means any executed document for transportation services, such as a BOL, a tariff, a tender, a contract, a GTR, invoices, paid invoices, any transportation bills, or other equivalent documents, including electronic documents.

Transportation payment is a payment made by an agency to a TSP for the movement of goods, people or transportation related services.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight, household goods, or passenger transportation or related services to an agency.

Subpart B—Ordering and Paying for Transportation

§ 102–118.20 Ordering transportation.

Ordering methods are prescribed in 41 CFR part 102–117 for freight,

household goods, and small parcels. Ordering transportation for travel is prescribed in the Federal Travel Regulation in 41 CFR subtitle F.

§ 102–118.25 TSP billing.

The TSP shall bill the agency in accordance with the procedures prescribed in the ordering documents or agreement.

§ 102–118.30 Electronic payment processing.

Agencies must pay for transportation services via EFT, unless issued an exception by the Secretary of the Treasury (31 U.S.C. 3332, *et seq.*).

§ 102–118.35 Improper payments.

Agencies must correctly pay individual transportation invoices (see 31 U.S.C. 3351(4), *Improper Payment* definition).

§ 102–118.40 Payment procedures.

Agencies must establish administrative procedures that ensure the following conditions are met:

(a) Services rendered are paid in accordance with the terms and conditions and the agency must not overpay or underpay a transportation bill.

(b) A document of agreement signifying acceptance of the arrangements with terms and conditions is filed with the participating agency by the TSP.

(c) The terms and conditions are included in all transportation agreements and referenced on all transportation documents (TDs).

(d) Bills are only paid to the TSP listed on the BOL, and cannot be waived.

(e) All fees to be paid are detailed in the aggregate delivery costs.

(f) All payments are subject to applicable statutory limitations.

(g) Procedures (such as a unique numbering system) are established to prevent and detect duplicate payments, properly account for expenditures and discrepancy notices.

(h) All transactions are verified with any indebtedness list. On charge card transactions, agencies must consult any indebtedness list if the charge card contract provisions allow for it.

(i) Procedures are established to process any unused tickets.

§ 102–118.45 Billing and payment.

(a) Bills should be received electronically and must be paid via EFT (31 U.S.C. 3332).

(b) Agencies may use a Government contractor issued charge card to acquire and pay for transportation.

§ 102–118.50 Government contractor issued charge cards.

A Government contractor issued charge card:

- (a) May be used to acquire freight and small parcel transportation.
- (b) Must be used (except when a GTR is allowed) for passenger transportation.

Forms and Documents**§ 102–118.55 Forms.**

Agencies must use commercial payment practices and forms to the maximum extent possible; however, when viewed necessary by an agency, the agency may use the following Government forms to pay transportation bills—

- (a) Standard Form (SF) 1113, Public Voucher for Transportation Charges, and SF 1113–A, Memorandum Copy;
- (b) SF 1103, Government Bill of Lading (used for movement of things, both privately owned and Government property for official uses);
- (c) OF 1169, Government Transportation Request (used to pay for tickets to move people); and
- (d) Privately Owned Personal Property Government Bill of Lading (used by the Department of Defense to move private property for official transfers).

§ 102–118.60 SF 1113.

When an agency requires an SF 1113 to be submitted the TSP must include its TIN and SCAC.

§ 102–118.65 GBL/GTR.

Agencies are not required to issue a GBL or GTR and must use commercial payment practices to the maximum extent possible.

§ 102–118.70 Other TDs.

If an agency uses any other TDs for shipping under its account, required safeguards must be in place.

§ 102–118.75 Exceptions.

BOLs are not required to ship small parcels.

§ 102–118.80 BOL mandatory terms.

The mandatory terms and conditions governing the use of bills of lading are:

- (a) Unless otherwise permitted by statute and approved by the agency, the TSP may not demand prepayment or collect charges from the consignee. The TSP, providing service under the BOL, must present a legible copy of the BOL or an original, properly certified GBL attached to SF 1113 to the paying office for payment. An agency may choose not to require that an SF 1113 be attached to the BOL and invoice if the TSP submits invoices using the agency's

approved third-party payment system (TPPS).

- (b) The shipment must be made at the restricted or limited valuation specified in the tariff or classification or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the BOL. (This is commonly referred to as an alternation of rates.)

(c) Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the TSP and extend the privilege of examining the shipment.

(d) The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered to be valid.

(e) Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3717).

§ 102–118.85 Travel document mandatory terms.

The mandatory terms and conditions governing the use of passenger transportation documents are:

- (a) U.S. Government travel must be via the lowest cost available that meets travel requirements (e.g., Government contract, fare, through, excursion, or reduced one way or round trip fare).

(b) The U.S. Government is not responsible for charges exceeding those applicable to the type, class, or character authorized in transportation documents.

(c) The U.S. Government contractor issued charge card must be used to the maximum extent possible to procure passenger transportation tickets. GTRs must be used minimally.

(d) Government passenger transportation documents must be in accordance with Federal Travel Regulation in 41 CFR subtitle F.

(e) Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate in effect on that date as published by the Secretary of the

Treasury pursuant to the Debt Collection Act of 1982.

- (f) The TSP must insert on the TD any known dates on which travel commenced.

(g) The issuing official or traveler, by signature, certifies that the requested transportation is for official business.

(h) The TSP must not honor any request containing erasures or alterations unless the TD contains the authentic, valid initials of the issuing official.

§ 102–118.90 Supplemental bills.

Agencies must process, review, and verify supplemental billings using the same procedures as on an original billing. Disputes are managed in accordance with agency policy.

§ 102–118.95 Prompt payment.

Agencies must advise the TSP using a statement of difference of any adjustments made, either electronically or in writing, within 7 days of receipt of the bill, as required by the Prompt Payment Act (31 U.S.C. 3901, *et seq.*).

Subpart C—Billing Documents**§ 102–118.100 Contract requirements.**

When buying passenger transportation, agencies must reference the applicable contract on a GTR or passenger transportation document (e.g., ticket).

§ 102–118.105 TSP submissions.

For shipments bought on a TD, the TSP must submit an original properly certified BOL and, when appropriate, an SF 1113. The TSP must submit all documents to the agency paying office.

§ 102–118.110 BOL limitations.

An agency may only pay the TSP listed on the BOL and with whom it has a contract.

§ 102–118.115 Extra fees for the preparation and use of the GBL or GTR.

A TSP cannot bill the agency to prepare a BOL or travel documents and cannot bill at a higher rate than the agreement permits.

§ 102–118.120 Final receipt.

Final receipt occurs when the shipment is delivered and endorsed by the consignee or authorized designee.

Agency Responsibilities—GBLs and GTRs**§ 102–118.125 Controlling GBL and GTR forms.**

Agencies—

- (a) Are responsible for the physical control, use, and accountability of GBLs and GTRs and must have procedures in

place to track, manage, and account for these documents when necessary.

(b) Must assign each form a unique sequential tracking number.

(c) Must hold employees accountable for the issuance and use of the forms.

Subpart D—Audit of Transportation Services

§ 102–118.130 Audit requirement.

(a) Pursuant to 31 U.S.C. 3726, agencies are required to establish a program to audit all transportation bills.

(b) Agencies may perform either a prepayment or a post payment audit of transportation invoices.

§ 102–118.135 Audit choices.

Agencies may perform a prepayment audit, post payment audit, or both.

(a) Pre-payment audits focus on preventing overpayments by identifying invoice errors before payment. They help prevent overspending, ensure payments align with contracts, reduce administrative burdens, and strengthen carrier relationships by promoting transparency and accuracy.

(b) Post-payment audits, on the other hand, serve as a second line of defense after payments are made. They recover overcharges, uncover systemic issues and trends, and provide valuable data for negotiating better carrier contracts and optimizing freight processes through continuous improvement.

(c) Jointly, these audits form a complementary strategy: pre-payment audits minimize upfront errors and spending, while post-payment audits recover missed costs and drive long-term optimization. Combining both approaches enhances overall freight cost control and operational efficiency.

§ 102–118.140 Audit program considerations.

Agencies must:

(a) Consider the methods used to order and pay for passenger, household goods, small parcel, and freight transportation to include Government contractor-issued charge cards. Each method of ordering transportation and transportation services for passenger, household goods, and freight transportation may require a different kind of prepayment audit process.

(b) Ensure that each TSP bill or employee travel voucher contains enough information for the auditor to determine which contract or rate tender is used and the type and quantity of any additional services.

(c) Guarantee that the audit is not conducted by the same firm providing the transportation services for the agency. Furthermore, the auditor cannot be affiliated with or have a financial interest in the transportation company providing the services.

(d) Establish an appeals process for a TSP to appeal any reduction in the amount billed. It is recommended the agency establish an electronic appeal process that will direct TSP-filed appeals to an agency official for determination of the claim.

(e) Establish a separate appeals process for a TSP to appeal a post payment audit, if the agency performs a post payment audit.

(f) Develop policies and procedures outlining how the agency will adjudicate transportation payment claims.

(g) Create a unique agency numbering system to manage commercial paper, to assure that a transportation bill is not paid more than once, and to manage and track accountable GBLs and GTRs.

(h) Provide notification(s) to TSPs that include a detailed description of the reasons for any full or partial rejection of the stated charges on the invoice.

(i) Include a statement in a cost reimbursable contract that the contractor will submit any transportation invoice, with a cost exceeding \$100, to the agency to undergo a transportation payment audit in accordance with the agency's policy. Bills under \$100.00 shall be retained on-site by the contractor and made available for on-site Government audits.

§ 102–118.145 Auditing methods.

Agencies must choose a method auditing transportation invoices:

(a) Agencies are encouraged to consider using a third-party electronic payment processor for transportation invoice processing, payment, and prepayment audit.

(b) Create an internal prepayment audit program.

(c) Contract directly with a prepayment audit service provider.

(d) Use the services of a prepayment audit contractor under GSA's multiple award schedule covering audit services, including transportation prepayment audit services (541211 Auditing Services).

(e) Use a third-party payment system (TPPS) or charge card company that includes prepayment audit functions.

§ 102–118.150 Requirement to audit.

All transportation bills must undergo an audit unless the agency chooses to perform statistical sampling as established by the Comptroller General (31 U.S.C. 3521(b)).

§ 102–118.155 Records.

Agencies must properly maintain and store transportation records, including paid transportation bills, in accordance with the General Records Schedule 1.1 *et seq.* (36 CFR part 1220).

§ 102–118.160 Billing adjustments.

Agencies must notify the TSP of any adjustment to the TSP bill either electronically or in writing within seven calendar days of the agency receipt of the bill.

§ 102–118.165 Appeals process.

Agencies must establish an appeals process for a TSP to appeal any reduction in the amount billed. An agency must complete the review of the appeal and inform the TSP of the agency determination within 30 calendar days of the receipt of the appeal, either electronically or in writing.

§ 102–118.170 Disputes.

If a TSP disagrees with the agency action it can file a claim with the CBCA or Federal Claims court. Claims must be filed within 3 years of the payment.

§ 102–118.175 Agency certifying and disbursing officers.

Agency certifying and disbursing officers are liable for any overpayments as prescribed in 31 U.S.C. 3528 and 31 U.S.C. 3322 respectively.

Subpart E—Claims and Appeal Procedures

§ 102–118.180 TSP files a claim.

A TSP may file a transportation claim against an agency under 31 U.S.C. 3726 for—

(a) Amounts owed but not included in the original billing;

(b) Amounts deducted or set off by an agency that are disputed by the TSP; or

(c) Requests by a TSP for amounts previously refunded in error by that TSP.

§ 102–118.185 TSP time limit to file a transportation claim.

The time limits differ by mode as shown in the following table:

Mode	Time Limit	Statute
(a) Air (domestic & international), TSPs not otherwise specified.	6 years	28 U.S.C. 2401, 2501.
(b) Freight Forwarders, Motor, Rail, Water (subject to 49 U.S.C. ch. 135).	3 years	49 U.S.C. 14705(f), 49 U.S.C. 11705(f).
(c) Water (not subject to 49 U.S.C. ch. 135).	2 years	46 U.S.C. 30905.

§ 102–118.190 Time limits on Government court claims against TSPs.

Statutory time limits vary depending on the mode and the service applied:

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Mode	Freight charges	Refund for overpayment	Loss and damage
(a) Rail, Motor, Freight Forwarders, Water (under 49 U.S.C. ch. 135).	3 years. 49 U.S.C. 11705	3 years. 49 U.S.C. 11705	6 years. 28 U.S.C. 2415.
(b) Water (not subject to 49 U.S.C. chapter 135).	6 years. 28 U.S.C. 2415	3 years. 46 U.S.C. 41301	1 year; Carriage of Goods By Sea Act, 46 USC 30701 Notes.
(c) Domestic air.	6 years. 28 U.S.C. 2415	6 years. 28 U.S.C. 2415	6 years. 28 U.S.C. 2415.
(d) International air.	6 years. 28 U.S.C. 2415	6 years. 28 U.S.C. 2415	2 years. 49 U.S.C. 40105.
(e) All others not specified in paragraphs (a) through (d) of this section.	6 years. 28 U.S.C. 2415	6 years. 28 U.S.C. 2415	6 years. 28 U.S.C. 2415

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§ 102-118.195 Interest on claims.

Interest penalties under the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) are not required when payment is delayed because of a dispute between an agency and a TSP.

§ 102-118.200 TSP files a claim against an agency.

A claim must be received by the agency where the claim arose within 3 years beginning the day after the latest of the following dates (except in time of war)—

- (a) Accrual of the cause of action;
- (b) Payment of charges for the transportation involved;

(c) Subsequent refund for overpayment of those charges; or

(d) Deductions made to a TSP claim by the Government under 31 U.S.C. 3726.

§ 102-118.205 Agency settles disputes.

Agencies must have procedures to resolve disputes with a TSP. Agency procedures must allow a TSP to appeal payment decisions.

§ 102-118.210 Agency decision deadline.

A TSP may file a claim with the CBCA if the agency fails to issue a decision on a claim within 30 days.

§ 102-118.215 Agency appeals a decision by the CBCA.

An agency may not appeal a CBCA decision.

§ 102-118.220 Debt collection rules.

Principles governing agency collection procedures for reporting debts to the Government Accountability Office (GAO) or the Department of Justice are found in 31 CFR chapter IX and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies (<https://www.gao.gov/products/149099>).

TSP Filing Information and Requirements

§ 102–118.225 Filing supplemental claims.

A TSP may file a supplemental claim. Each supplemental claim must cover charges relating to one paid transportation document.

§ 102–118.230 TSP challenges a statement of difference.

A TSP may appeal an agency's denial of its challenge to the statement of difference. However, the appeal must be handled at a higher level within the agency.

§ 102–118.235 TSP disagrees with the agency's decision.

If the TSP disagrees with an agency's decision the TSP may file a claim with the CBCA or Federal Court of Claims.

§ 102–118.240 Appeals of a CBCA audit decision.

A ruling by the CBCA is the final administrative remedy available and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any of the TSP's rights. A TSP may still pursue a legal remedy through the courts.

§ 102–118.245 Agency appeals a CBCA prepayment audit decision.

An agency may not appeal a prepayment audit decision. Agencies must follow the ruling of the CBCA.

§ 102–118.250 Interest applicability.

The Government can charge interest on an amount due from a TSP. This procedure is provided for within the Debt Collection Act (31 U.S.C. 3717), the Federal Claims Collection Standards (31 CFR chapter IX), and 41 CFR part 105–55.

§ 102–118.255 Claim on collection actions.

A TSP may file a claim in accordance with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) involving collection actions with the agency out of whose activities they arose.

§ 102–118.260 CBCA time limits.

The CBCA must receive a request for review from the TSP within six months (not including times of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. Details regarding where and how to file are available at cbca.gov/howto/rules/transportation.html#transportation.

■ 19. Revise part 102–192 to read as follows:

PART 102–192—MAIL MANAGEMENT

Sec.

102–192.5 Introduction.

102–192.10 Materials covered by this part.

102–192.15 Definitions.

Financial Requirements for All Agencies

102–192.20 Payment processes.

102–192.25 Managing mail expenditures.

Security Requirements for All Agencies

102–192.30 Security policies and plans.

102–192.35 Coordination with security providers.

Performance Measurement Requirements for All Agencies

102–192.40 Scope of performance measurement.

Agency Mail Manager Requirements

102–192.45 Agency mail managers.

102–192.50 Responsibilities of agency mail managers.

Authority: 44 U.S.C. 2901–2906.

§ 102–192.5 Introduction.

This part prescribes policy and requirements for the effective, economical, and secure management of incoming, internal, and outgoing mail and materials in Federal agencies.

§ 102–192.10 Materials covered by this part.

This part applies to all mail and materials that pass through a Federal mail center, including all incoming and outgoing materials.

§ 102–192.15 Definitions.

The following definitions apply to this part:

Agency mail manager means the person who manages the overall mail management program of a Federal agency.

Consolidation means the process of combining into a container two or more pieces of mail directed to the same addressee or installation on the same day.

Consolidation of facilities means the process of combining more than one mail center into a central location. The decision to consolidate should be based on a cost analysis comparing the projected cost savings to the cost of implementation.

Expedited mail means mail designated for overnight and 2- or 3-day delivery by service providers. Examples of *expedited mail* include Dalsey, Hillblom, Lynn (DHL); Federal Express (FedEx); United Parcel Service (UPS); and United States Postal Service (USPS) express mail.

Federal agency or *agency* as defined in 44 U.S.C. 2901(14) means—

(1) An executive agency, which includes:

(i) Any executive department as defined in 5 U.S.C. 101;

(ii) Any wholly owned Government corporation as defined in 31 U.S.C. 9101;

(iii) Any independent establishment in the executive branch as defined in 5 U.S.C. 104; and

(2) Any establishment in the legislative or judicial branch of the Government, except the Supreme Court, the Senate, the U.S. House of Representatives, the Architect of the Capitol, and any activities under the direction of the Architect of the Capitol.

Federal facility or *facility* means any office building, installation, base, etc., where Federal agency employees work. This includes any facility where the Federal Government pays postage expenses even though few or no Federal employees are involved in processing the mail.

Internal mail means mail generated within a Federal facility that is delivered within that facility or to a nearby facility of the same agency, so long as it is delivered by agency personnel.

Mail means that as described in § 102–192.10.

Mail center means an organization and/or place, within or associated with a Federal facility, where incoming and/or outgoing Federal mail and materials are processed.

Mail expenditures means direct expenses for postage, fees and services, and all other mail costs, meter fees, permit fees, etc. (e.g., payments to service providers, mail center personnel costs, mail center overhead).

Mail piece design means creating and printing items to be mailed so that they can be processed efficiently and effectively by USPS automated mail processing equipment.

Official mail means incoming or outgoing mail that is related to official business of the Federal Government.

Outgoing mail means mail generated within a Federal facility that is going outside that facility.

Personal mail means incoming or outgoing mail that is not related to official business of the Federal Government.

Postage means payment for delivery service that is affixed or imprinted to a mail piece usually in the form of a postage stamp, permit, imprint, or meter impression.

Presort means a mail preparation process used to receive a discounted mail rate by sorting mail according to USPS standards.

Program level means a component, bureau, regional office, and/or a facility that generates outgoing mail.

Service provider means any agency or company that delivers materials and mail. Some examples of service providers are DHL, FedEx, UPS, USPS, courier services, the U.S. Department of Defense, the U.S. Department of State's Office of Diplomatic Pouch and Mail, and other Federal agencies providing mail services.

Telework means a flexible work arrangement under which an employee performs assigned duties and responsibilities, and other authorized activities, from an approved alternate location.

Unauthorized use of agency postage means the use of penalty or commercial mail stamps, meter impressions, or other postage indicia for personal or unofficial use.

Financial Requirements for All Agencies

§ 102–192.20 Payment processes.

Agencies must pay the USPS and other service providers via a method approved by the U.S. Treasury.

§ 102–192.25 Managing mail expenditures.

All agencies must have an accountable system for making postage payments; that is, a system that allocates postage expenses at the program level within the agency and makes program level managers accountable for obligating and tracking those expenses. The agency's finance systems should track all mail expenditures separately to the program level or below, and should—

(a) Show expenses for postage and all other mail expenditures, payments to service providers, etc., separate from all other administrative expenses;

(b) Allow mail centers to establish systems to charge their customers for mail expenditures; and

(c) Identify and charge the mail expenditures that are part of printing contracts down to the program level.

Security Requirements for All Agencies

§ 102–192.30 Security policies and plans.

(a) Agencies must have a written mail security policy that applies throughout your agency.

(b) Agencies must have a written mail security plan for each facility that processes mail, regardless of the facility's mail volume.

(c) Agencies must have a security policy for employees receiving incoming and sending outgoing mail at an alternative worksite, such as a telework center.

(d) The scope and level of detail of each facility mail security plan should be commensurate with the size and

responsibilities of each facility. For small facilities, agencies may use a general plan for similar locations. For larger locations, agencies must develop a plan that is specifically tailored to the threats and risks at your location. Agencies should determine which facilities they consider small and large for the purposes of this section, so long as the basic requirements for a security plan are met at every facility.

(e) All mail managers are required to annually report the status of their mail security plans to agency headquarters. At a minimum, these reports should assure that all mail security plans comply with the requirements of this part, including annual review by a subject matter expert and regular rehearsal of responses to various emergency situations by facility personnel.

(f) A security professional who has expertise in mail center security should review the agency's mail security plan and policies annually to include identification of any deficiencies. Review of facility mail security plans can be accomplished by subject matter experts such as agency security personnel. If these experts are not available within your agency, seek assistance from the U.S. Postal Inspection Service (<https://postalinspectors.uspis.gov/>) or the Federal Protective Service (FPS) (<http://www.dhs.gov/federal-protective-service>).

§ 102–192.35 Coordination with security providers.

Agency mail managers must coordinate with their agency security service and/or the FPS or the U.S. Postal Inspection Service to develop agency mail security policies and plans. The FPS has developed standards for building construction and management, including standards for mail centers. At a minimum, the agency mail security plan must address the following topics:

- (a) Risk assessment;
- (b) A plan to protect staff and all other occupants of agency facilities from hazards that might be delivered in the mail;
- (c) Operating procedures;
- (d) A plan to provide a visible mail screening operation;
- (e) Training mail center personnel;
- (f) Testing and rehearsing responses to various emergency situations by agency personnel;
- (g) Managing threats;
- (h) Communications plan;
- (i) Occupant Emergency Plan;
- (j) Continuity of Operations Plan; and
- (k) Annual reviews of the agency's security plan.

Performance Measurement Requirements for All Agencies

§ 102–192.40 Scope of performance measurement.

Agencies must have performance measures for mail operations at the agency level and in all mail facilities and program levels.

Agency Mail Manager Requirements

§ 102–192.45 Agency mail managers.

Every agency, as defined in § 102–192.10, must have an agency mail manager at a managerial level that enables them to speak for their agency on mail management as outlined in this part.

§ 102–192.50 Responsibilities of agency mail managers.

In addition to carrying out the responsibilities discussed in § 102–192.45—

(a) Establish written policies and procedures to provide timely and cost effective dispatch and delivery of mail and materials;

(b) Ensure agency-wide awareness and compliance with standards and operational procedures established by all service providers used by the agency;

(c) Set policies for expedited mail, mass mailings, mailing lists, and couriers;

(d) Implement cost savings through:

(1) Consolidating and presorting wherever practical, for example, internal and external mail, and consolidation of agency-wide mail operations and official mail facilities; and

(2) Reducing the volume of agency to agency mail whenever possible;

(e) Develop and direct agency programs and plans for proper and cost effective use of transportation, equipment, and supplies used for mail;

(f) Ensure that all facility and program level mail personnel receive appropriate training and certifications to successfully perform their assigned duties;

(g) Promote professional certification for mail managers and mail center employees;

(h) Ensure that expedited mail service providers are used only when authorized by the Private Express Statutes, 39 U.S.C. 601–606;

(i) Establish written policies and procedures to minimize incoming and outgoing personal mail;

(j) Provide guidance to agency representatives who develop correspondence or design mailing materials including Business Reply Mail, letterhead, and mail piece design;

(k) Represent the agency in its relations with service providers, other

agency mail managers, and the General Services Administration's Office of Government-wide Policy;

(l) Ensure agency policy incorporates Federal hazardous materials requirements set forth in 49 CFR parts 100 through 185; and

(m) Ensure safety and security requirements specified in §§ 102–192.30 and 102–192.35 are fulfilled.

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