

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

May 4, 2006

FEDERAL MANAGEMENT REGULATION
Amendment 2006-01

TO: Heads of Federal agencies

SUBJECT: FMR Case 2006-102-3; Replacement of Personal Property Pursuant to the Exchange/Sale Authority

1. Purpose. This document includes pages that reflect amendments to Part 102-39 of the Federal Management Regulation (FMR).

2. Background. In the years since 41 CFR part 102-39 was published as a final rule, the references to other regulations which migrated from the Federal Property Management Regulations (FPMR) (41 CFR chapter 101) to the Federal Management Regulation (FMR) (41 CFR chapter 102) became outdated. Also, Public Law 107-217 revised and recodified certain provisions of the Federal Property and Administrative Services Act of 1949 (Property Act). For example, the Property Act provisions and topics previously found at 40 U.S.C. 471-514 will now generally be found at 40 U.S.C. 101-705. This revised regulation updates the title 40 U.S.C. citations to reflect the changes made by Public Law 107-217. Additionally, in the intervening years since these three regulations were published, several agencies have moved or changed names. Finally, updating or clarifying revisions were made where the revisions are seen as administrative or clerical in nature.

3. Effective date. This rule was published in the *Federal Register* and became effective on May 24, 2006.

4. Explanation of changes. The General Services Administration is amending the Federal Management Regulation (FMR) language that pertains to personal property by correcting references to outdated or superceded provisions of law or regulation; correcting text to be in conformance with revised laws, regulation, or Federal agency responsibilities; and clarifying text where the intended meaning could be updated or made clearer.

5. Filing instructions. Make the following page changes:

Remove FMR pages:

102-39-1 thru 102-39-4

Insert FMR pages:

102-39-1 thru 102-39-4

Attachment

PART 102-39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Subpart A—General

§102-39.5—How are the terms “I” and “you” used in this part?

Use of pronouns “I” and “you” throughout this part refer to executive agencies.

§102-39.10—What does this part cover?

This part covers the exchange/sale authority, and applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts [102-33](#) and 101-42 of this title.

§102-39.15—Why should I use the exchange/sale authority?

You should use the exchange/sale authority to:

(a) Reduce the cost of replacement personal property. If you have personal property that needs to be replaced, you can exchange or sell that property and apply the exchange allowance or sales proceeds to reduce the cost of similar replacement property. By contrast, if you choose not to replace the property using the exchange/sale authority, you may declare it excess and dispose of it through the normal disposal process. Any sales proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you.

(b) Avoid costs (e.g., administrative and storage) that may be incurred when declaring the property to be replaced as excess and processing it through the normal disposal process. The normal disposal process may include abandonment or destruction, reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, or sale to the public. The time required to determine which of these options will apply and to complete the disposal transaction is likely to exceed the time required for an exchange/sale transaction.

§102-39.20—What definitions apply to this part?

The following definitions apply to this part:

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

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

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

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

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

“Federal agency” means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

“Historic item” means property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

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

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

“Similar” means where the acquired item and replaced item:

- (1) Are identical;
- (2) Are designed and constructed for the same purpose;
- (3) Constitute parts or containers for identical or similar end items; or
- (4) Fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§102-39.25—How do I request a deviation from this part?

See [§§102-2.60](#) through [102-2.110](#) of this chapter to request a deviation from the requirements of this part.

Subpart B—Exchange/Sale Considerations

§102-39.30—When should I not use the exchange/sale authority?

You should not use the exchange/sale authority if the exchange allowance or estimated sales proceeds for the property will be unreasonably low. You must either abandon or destroy such property, or declare the property excess, in accordance with [part 102-36](#) of this chapter. Further, you

must not use the exchange/sale authority if the transaction(s) would violate any other applicable statute or regulation.

§102-39.35—How do I determine whether to do an exchange or a sale?

You must determine whether an exchange or sale will provide the greater return for the Government. When estimating the return under each method, consider all related administrative and overhead costs.

§102-39.40—When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?

If you have property to replace which is eligible for exchange/sale, you should first, to the maximum extent practicable, solicit:

(a) Federal agencies known to use or distribute such property. If a Federal agency is interested in acquiring and paying for the property, you should arrange for a reimbursable transfer. Reimbursable transfers may also be conducted with the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

- (1) Do so under terms mutually agreeable to you and the recipient.
- (2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.
- (3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

(b) State Agencies for Surplus Property (SASPs) known to have an interest in acquiring such property. If a SASP is interested in acquiring the property, you should consider selling it to the SASP by negotiated sale at fixed price under the conditions specified at [§102-38.125](#) of this title. The sales proceeds must be applied in whole or part payment for property acquired to replace the transferred property.

§102-39.45—What prohibitions apply to the exchange/sale of personal property?

You must not use the exchange/sale authority for:

(a) The following FSC groups of personal property:

- 10 Weapons.
- 11 Nuclear ordnance.
- 12 Fire control equipment.
- 14 Guided missiles.
- 15 Aircraft and airframe structural components (except FSC Class 1560 Airframe Structural Components).
- 42 Firefighting, rescue, and safety equipment.

- 44 Nuclear reactors (FSC Class 4472 only).
- 51 Hand tools.
- 54 Prefabricated structure and scaffolding.
- 68 Chemicals and chemical products, except medicinal chemicals.
- 84 Clothing, individual equipment, and insignia.

Note to §102-39.45(a): The exception to the prohibition is Department of Defense (DOD) property in FSC Groups 10, 12, and 14 (except FSC Class 1005) for which the applicable DOD demilitarization requirements, and any other applicable regulations and statutes are met.

(b) Materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(c) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of §101-42.1102-4 of this title.

(d) Controlled substances, unless you meet the requirements of §101-42.1102-3 of this title.

(e) Scrap materials, except in the case of scrap gold for fine gold.

(f) Property that was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(g) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(h) Combat material without demilitarizing it or obtaining a demilitarization waiver or other necessary clearances from the Department of Defense Demilitarization Office.

(i) Flight Safety Critical Aircraft Parts unless you meet the provisions of [§102-33.370](#) of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

- (1) Restriction on procurement of a commodity or commodities;
 - (2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or
 - (3) Contractual obligation.
- (l) Vessels subject to 40 U.S.C. 548.

§102-39.50—What conditions apply to the exchange/sale of personal property?

You may use the exchange/sale authority only if you meet all of the following conditions:

(a) The property exchanged or sold is similar to the property acquired;

(b) The property exchanged or sold is not excess or surplus, and you have a continuing need for that type of property;

(c) The number of items acquired must equal the number of items exchanged or sold unless:

(1) The item(s) acquired perform all or substantially all of the tasks for which the item(s) exchanged or sold would otherwise be used; or

(2) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified in [§102-39.20](#) that they are a part(s) or container(s) for identical or similar end items;

(d) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and

(e) You document at the time of exchange or sale (or at the time of acquiring the replacement property if it precedes the sale) that the exchange allowance or sale proceeds will be applied to the acquisition of replacement property.

§102-39.55—What exceptions apply to the conditions for exchange/sale in [§102-39.50](#)?

The exceptions that apply to the conditions for exchange/sale [§102-39.50](#) are:

(a) You may exchange books and periodicals in your libraries for other books and periodicals, without monetary appraisal or detailed listing or reporting.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart C—Exchange/Sale Methods and Reports

§102-39.60—What are the exchange methods?

Exchange of property may be accomplished by either of the following methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

§102-39.65—What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in [part 102-38](#) of this title, in the sale of property being replaced, except for the provisions of [§§102-38.100](#) through [102-38.115](#) of this title regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed \$500; or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of [§§102-38.120](#) and [102-38.125](#) of this title.

§102-39.70—What are the accounting requirements for the proceeds of sale?

You must account for sales proceeds in accordance with the general finance and accounting rules applicable to you. Except as otherwise directed by law, all proceeds from the sale of personal property under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for obligation for the purchase of replacement property. Any sales proceeds not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

§102-39.75—What information am I required to report?

(a) You must submit, within 90 calendar days after the close of each fiscal year, a summary report in a format of your choice on the exchange/sale transactions made under this part during the fiscal year (except for transactions involving books and periodicals in your libraries). The report must include:

(1) A list by Federal Supply Classification Group of property sold under this part showing the:

(i) Number of items sold;

(ii) Acquisition cost; and

(iii) Net proceeds.

(2) A list by Federal Supply Classification Group of property exchanged under this part showing the:

(i) Number of items exchanged;

(ii) Acquisition cost; and

(iii) Exchange allowance.

(b) Submit your report electronically or by mail to the General Services Administration, Office of Travel, Transportation and Asset Management (MT), 1800 F Street, NW., Washington, DC 20405.

(c) Report control number: 1528-GSA-AN.

(d) If you make no transactions under this part during a fiscal year, you must submit a report stating that no transactions occurred.

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