

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

August 29, 2008

FEDERAL MANAGEMENT REGULATION
Amendment 2008-07

TO: Heads of Federal agencies

SUBJECT: FMR Case 2007-102-1, Replacement of Personal Property
Pursuant to the Exchange/Sale Authority

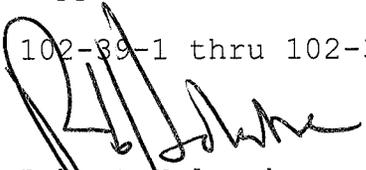
1. Purpose. This document includes pages that reflect amendments to Part 102-39 of the Federal Management Regulation (FMR).
2. Background. The GSA's Office of Governmentwide Policy (OGP) facilitated the interagency Federal Asset Management Evaluation (FAME) initiative during 2004 and 2005. Discussions with GSA's Federal customers during this initiative revealed a perception that there were too many unnecessary restrictions and "hurdles" hindering the effective use of this authority. One of the recommendations of the FAME report (March 31, 2005) was to "increase the flexibility of the exchange/sale program to promote the use of this authority throughout the Government."
3. Effective date. This final rule was published in the *Federal Register* at 73 FR 50878 and became effective on August 29, 2008.
4. Explanation of changes. The GSA amended the FMR by updating coverage on the replacement of personal property pursuant to the exchange/sale authority. The changes were prompted by recommendations of the Federal Asset Management Evaluation (FAME) interagency working group led by GSA.
5. Filing instructions. Make the following page changes:

Remove FMR pages:

Part 102-39 TOC
pp. 102-39-i and 102-39-ii
102-39-1 thru 102-39-4

Insert FMR pages:

Part 102-39 TOC
pp. 102-39-i and
102-39-ii
102-39-1 thru 102-39-4



Robert Holcombe,
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Office of Travel, Transportation &
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PART 102-39—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

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

Subpart A—General

§102-39.5—What is the exchange/sale authority?

The exchange/sale authority is a statutory provision, (40 U.S.C. 503), which states in part: “In acquiring personal property, an executive agency may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired.”

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

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

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

The following definitions apply to this part:

“Acquire” means to procure or otherwise obtain personal property, including by lease (sometimes known as rent).

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

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

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

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

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

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

“Historic item” means property having added value for display purposes because its historical significance is greater

than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

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

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

“Service Life Extension Program (SLEP)” means the modification of a personal property item undertaken to extend the life of the item beyond that which was previously planned. SLEPs extend capital asset life by retrofit, major modification, remanufacturing, betterment, or enhancement.

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

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

“Surplus property” means excess personal property not required for the needs of any Federal agency, as determined by GSA under part [102-37](#) of this chapter.

§102-39.25—Which exchange/sale provisions are subject to deviation?

All of the provisions in this part are subject to deviation (upon presentation of adequate justification) except those mandated by statute. See the link on “Exchange/Sale” at www.gsa.gov/personalpropertypolicy for additional information on requesting deviations from this part.

§102-39.30—How do I request a deviation from this part?

See part [102-2](#) of this chapter (41 CFR part [102-2](#)) to request a deviation from the requirements of this part.

Subpart B—Exchange/Sale Considerations

§102-39.35—When should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority when replacing personal property.

§102-39.40—Why should I consider using the exchange/sale authority?

You should consider using the exchange/sale authority to reduce the cost of replacement personal property. When you have personal property that is wearing out or obsolete and must be replaced, you should consider either exchanging or selling that property and using the exchange allowance or sales proceeds to offset the cost of the replacement personal property. Conversely, if you choose not to replace the property using the exchange/sale authority, you may declare it as excess and dispose of it through the normal disposal process as addressed in part [102-36](#) of this chapter. Keep in mind, however, that any net proceeds from the eventual sale of that property as surplus generally must be forwarded to the miscellaneous receipts account at the United States Treasury and thus would not be available to you. You may use the exchange/sale authority in the acquisition of personal property even if the acquisition is under a services contract, as long as the property acquired under the services contract is similar to the property exchanged or sold (*e.g.*, for a SLEP, exchange allowances or sales proceeds would be available for replacement of similar items, but not for services).

§102-39.45—When should I not use the exchange/sale authority?

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

§102-39.50—How do I determine whether to do an exchange or a sale?

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

§102-39.55—When should I offer property I am exchanging or selling under the exchange/sale authority to other Federal agencies or State Agencies for Surplus Property (SASP)?

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

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

District of Columbia, and mixed-ownership Government corporations. When conducting a reimbursable transfer, you must:

(1) Do so under terms mutually agreeable to you and the recipient.

(2) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property.

(3) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property; and

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

§102-39.60—What restrictions and prohibitions apply to the exchange/sale of personal property?

Unless a deviation is requested of and approved by GSA as addressed in part [102-2](#) of this chapter and the provisions of [§§102-39.25](#) and [102-39.30](#), you must not use the exchange/sale authority for:

- (a) The following FSC groups of personal property:
- 10 Weapons.
 - 11 Nuclear ordnance.
 - 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 4470 only).
 - 51 Hand tools.
 - 54 Prefabricated structure and scaffolding (FSC Class 5410 Prefabricated and Portable Buildings, FSC Class 5411 Rigid Wall Shelters, and FSC Class 5419 Collective Modular Support System only).
 - 68 Chemicals and chemical products, except medicinal chemicals.
 - 84 Clothing, individual equipment, and insignia.

Note to [§102-39.60\(a\)](#): Under no circumstances will deviations be granted for FSC Class 1005, Guns through 30mm. Deviations are not required for Department of Defense (DoD) property in FSC Groups 10 (for classes other than FSC Class 1005), 12 and 14 for which the applicable DoD demilitarization requirements, and any other applicable regulations and statutes are met.

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

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(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 (FSCAP) and Critical Safety Items (CSI) unless you meet the provisions of [§102-33.370](#) of this title.

(j) Acquisition of unauthorized replacement property.

(k) Acquisition of replacement property that violates any:

(1) Restriction on procurement of a commodity or commodities;

(2) Replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(3) Contractual obligation.

(l) Vessels subject to 40 U.S.C. 548.

§102-39.65—What conditions apply to the exchange/sale of personal property?

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

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

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

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

(d) When replacing personal property, the exchange allowance or sales proceeds from the disposition of that property may only be used to offset the cost of the replacement property, not services; and

(e) Except for transactions involving books and periodicals in your libraries, you document the basic facts associated

with each exchange/sale transaction. At a minimum, the documentation must include:

(1) The FSC Group of the items exchanged or sold, and the items acquired;

(2) The number of items exchanged or sold, and the number of items acquired;

(3) The acquisition cost and exchange allowance or net sales proceeds of the items exchanged or sold, and the acquisition cost of the items acquired;

(4) The date of the transaction(s);

(5) The parties involved; and

(6) A statement that the transactions comply with the requirements of this part [102-39](#).

Note to [§102-39.65](#): In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart C—Exchange/Sale Methods and Reports

§102-39.70—What are the exchange methods?

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

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

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

§102-39.75—What are the sales methods?

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

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

(2) Otherwise authorized by law.

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

§102-39.80—What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was 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.

§102-39.85—What information am I required to report?

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

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

- (i) Number of items sold;
- (ii) Acquisition cost; and
- (iii) Net proceeds.

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

- (i) Number of items exchanged;
- (ii) Acquisition cost; and
- (iii) Exchange allowance.

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

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

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