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. 102-39-1 and 102-39-ii
102-39-1 thru 102-39-4

Insert FMR pages:
Part 102-39 TOC
   pp. 102-39-1 and
      102-39-ii
102-39-1 thru 102-39-4

Robert Molcombe,
Director, Personal Property Management Policy
Office of Travel, Transportation &
Asset Management

August 29, 2008
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§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 exchange allowance or estimated sales proceeds for the 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. 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 Government corporation, 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.

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

§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.