

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

April 16, 2007

FEDERAL MANAGEMENT REGULATION
Amendment 2007-02

TO: Heads of Federal agencies

SUBJECT: FMR Case 2007-102-1; Donation of Surplus Personal
Property—Historic Light Stations

1. Purpose. This document includes pages that reflect amendments to Part 102-37 of the Federal Management Regulation (FMR). This rule was published in the *Federal Register* at 72 FR 12572, March 16, 2007.

2. Background. Public Law 109-313, known as the General Services Administration Modernization Act, revised certain provisions of title 40 U.S.C. 549. This final rule reflects the changes made by Public Law 109-313

3. Effective date. April 16, 2007.

4. Explanation of changes. Part 102-37 is amended by incorporating the provisions in Public Law 109-313 regarding donations to historic light stations.

5. Filing instructions. Make the following page changes:

Remove FMR pages:

102-37-11 and 102-37-12

102-37-C-1 thru 102-37-C-4

Insert FMR pages:

102-37-11 and 102-37-12

102-37-C-1 thru 102-37-C-4

(BLANK PAGE)

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§102-37.340—When may a SASP terminate a cooperative agreement?

You may terminate a cooperative agreement with GSA 60-calendar days after providing GSA with written notice. For other cooperative agreements with other authorized parties, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

Audits and Reviews

§102-37.345—When must a SASP be audited?

For each year in which a SASP receives \$500,000 or more a year in surplus property or other Federal assistance, it must be audited in accordance with the Single Audit Act (31 U.S.C. 7501–7507) as implemented by Office of Management and Budget (OMB) Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations” (for availability see 5 CFR 1310.3). GSA’s donation program should be identified by Catalog of Federal Domestic Assistance number 39.003 when completing the required schedule of Federal assistance.

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

No, although SASPs are covered under the single audit process in OMB Circular A-133, from time to time the 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.

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

SASPs, if they donate \$500,000 or more in Federal property to a donee in a fiscal year, must ensure that the donee has an audit performed in accordance with Circular A-133. If a donee receives less than \$500,000 in donated property, the SASP is not expected to assume responsibility for ensuring the donee meets audit requirements, beyond making sure the donee is aware that the requirements do exist. It is the donee’s responsibility to identify and determine the amount of Federal assistance it has received and to arrange for audit coverage.

Reports

§102-37.360—What reports must a SASP provide to GSA?

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

(b) *Additional reports.* Make other reports GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

Liquidating a SASP

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

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

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

§102-37.370—Do liquidation plans require public notice?

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

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

§102-37.375—How is the pronoun “you” used in this subpart?

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

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

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

(a) Section 549(d) of title 40, United States Code authorizes surplus property under the control of the Department of Defense (DOD) to be donated, through SASPs, to educational activities which are of special interest to the armed services (referred to in this [part 102-37](#) as service educational activities or SEAs).

(b) Section 549(c)(3) of title 40, United States 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 free all residents of a community, district, State or region.
- (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 subsection (b) of that section, 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.

Donee Eligibility

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

(a) For most public and nonprofit activities, the SASP determines if an applicant is eligible to receive property as a

public agency, a nonprofit educational or public health institution, or for a program for older individuals. A SASP may request GSA assistance or guidance in making such determinations.

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

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

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

- (a) Conform to the definition of one of the categories of eligible entities listed in [§102-37.380](#) (see [Appendix C](#) of this part for definitions);
- (b) Demonstrate that it meets any approval, accreditation, or licensing requirements for operation of its program;
- (c) Prove that it is a public agency or a nonprofit and tax-exempt organization under section 501 of the Internal Revenue Code;
- (d) Certify that it is not debarred, suspended, or excluded from any Federal program, including procurement programs; and
- (e) Operate in compliance with applicable Federal nondiscrimination statutes.

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

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

- (a) A certificate or letter from a nationally recognized accrediting agency affirming the applicant meets the agency's standards and requirements.
- (b) The applicant's appearance on a list with other similarly approved or accredited institutions or programs when that list is published by a State, regional, or national accrediting authority.
- (c) Letters from State or local authorities (such as a board of health or a board of education) stating that the applicant meets the standards prescribed for approved or accredited institutions and organizations.
- (d) In the case of educational activities, letters from three accredited or State-approved institutions that students from the applicant institution have been and are being accepted.
- (e) In the case of public health institutions, licensing may be accepted as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of the institution.

(f) The awarding of research grants to the institution by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization.

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APPENDIX C—GLOSSARY OF TERMS FOR DETERMINING ELIGIBILITY OF PUBLIC AGENCIES AND NONPROFIT ORGANIZATIONS

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

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

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

“Accredited” means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

“Approved” means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

“Child care center” means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14 (or as prescribed by State law) and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

“Clinic” means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

“College” means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

“Conservation” means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

“Drug abuse or alcohol treatment center” means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

“Economic development” means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

“Education” means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

“Educational institution” means an approved, accredited, or licensed public or nonprofit institution, facility, entity, or organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally or physically disabled, or an educational radio or television station.

“Educational radio or television station” means a public or nonprofit radio or television station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes.

“Health center” means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

“Historic light station” means a historic light station 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 subsection (b) of that section, notwithstanding the number of hours that the historic light station is open to the public.

“Homeless individual” means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

“Hospital” means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

“Library” means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

“Licensed” means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

“Medical institution” means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a “medical institution.”

“Museum” means a public or nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term “museum” includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of “museum” does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

“Nationally recognized accrediting agency” means an accrediting agency that the Department of Education recognizes under 34 CFR part 600. (For a list of accrediting agencies, see the Department’s web site at <http://www.ed.gov/admins/finaid/accred>.)

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

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

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

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

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

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

“Public health” means a program(s) to promote, maintain, and conserve the public’s health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health

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programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

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

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

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

- (1) Public police departments.
- (2) Sheriffs’ offices.
- (3) The courts.

(4) Penal and correctional institutions (including juvenile facilities).

(5) State and local civil defense organizations.

(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

“School (except schools for the mentally or physically disabled)” means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

“School for the mentally or physically disabled” means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

“University” means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

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