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GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-36

[FMR Case 2012-102-4; Docket No. 2012-0014; Sequence No. 1]

RIN 3090-AJ30

**Federal Management Regulation; Disposal and Reporting of
Federal Electronic Assets (FEA)**

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

ACTION: Proposed rule with request for comments.

SUMMARY: GSA is proposing to amend the Federal Management Regulation (FMR) by changing its personal property policy regarding the disposal and reporting of Federal Electronic Assets (FEA). The proposed changes are to provide policy for the safe handling and disposal of FEA, and make minor clarifying edits to existing policies.

DATES: Interested parties should submit comments in writing on or before [**Insert 60 days after publication in the FEDERAL REGISTER**] to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR Case 2012-102-4 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FMR Case 2012-102-4" under the heading

"Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FMR Case 2012-102-4." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FMR Case 2012-102-4" on your attached document.

- Fax: 202-501-4067
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street, NW, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR Case 2012-102-4 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or confidential business information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Holcombe, Office of Government-wide Policy, Office of Asset and Transportation Management (MA), at 202-501-3828 or by e-mail at robert.holcombe@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FMR Case 2012-102-4.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed amendment to FMR part 102-36 (41 CFR part 102-36) would update policy pertaining to the disposal and reporting of FEA. On October 5, 2009, President Obama signed Executive Order (E.O.) 13514, Federal Leadership in Environmental, Energy, and Economic Performance, to create a clean energy economy that will increase the nation's prosperity, promote energy security, protect the interests of taxpayers, and safeguard the health of our environment. The E.O. mandated Federal agencies to lead the national effort by example.

To address the goals of the E.O., an Interagency Task Force on Electronics Stewardship (the Task Force) was formed, and was co-chaired by the White House Council on Environmental Quality, the Environmental Protection Agency, and GSA. On July 20, 2011, the Task Force issued its report, the "National Strategy for Electronic Stewardship," which provided recommendations to Executive agencies in regards to meeting the objectives of E.O. 13514 for the reuse, disposal, and handling of FEA. The Task Force recommended that certain sections of FMR part 102-36 be amended to provide policy to Executive agencies on the disposal and reporting of FEA.

In order to develop those amendments, GSA requests comments regarding (1) the suitability and feasibility of bulk sale of functional Federal Electronic Assets (FEA) to certified recyclers only through public auction programs (not the general public as drafted in this proposed rule); (2) restricting disposal of FEA in landfills or through incineration; (3) what electronics recycling standards are in use or being developed; and, (4) criteria regarding the technical content and other aspects of the electronics recycling standards that recyclers conform to in order to be considered "certified recyclers " under this proposed rule.

At this time, GSA has identified two electronics recycling standards to which recyclers may conform to in order to be considered a "certified recycler" under this proposed rule - the Responsible Recycling (R2) Standard (<http://www.r2solutions.org/r2practices/r2-standard/>) and the e-Stewards Standard (<http://e-stewards.org/certification-overview/e-stewards-standard/>). Recyclers that conform to either of these two standards would be considered a "certified recycler" under the proposed rule.

GSA recognizes that recyclers may use other existing standards or that other standards may be developed in the

future. In order to ensure that recyclers conforming to such other standards are not excluded from procurements as the recycling industry grows domestically and internationally, GSA, in consultation with relevant agencies, will develop criteria to be used to evaluate and determine which standards recyclers may conform to in order to be considered "certified recyclers" under this proposed rule. Once completed, GSA will make these criteria publicly available.

Comments regarding certification criteria should address the following:

(1) The technical content of the standard, such as environmental, workplace and safety practices, data sanitization and security standards, environmental, health and safety management systems, and how to promote reuse and recycling over disposal;

(2) The standard-setting process - i.e., the procedures used to develop and maintain the standard, such as the transparency and objectiveness of the processes; and

(3) The conformity assessment procedures used to determine whether a recycler conforms to a standard. An example would be the independence of assessors evaluating a recycler.

Additional information regarding reuse, recycling, and refurbishment is available at

<http://www.epa.gov/fec/publications.html#eol>.

In addition, the proposed amendment would make minor edits, update organizational designations, and make non-substantive changes to improve the readability and ease of use of this part.

This proposed amendment would specifically:

1. Replace the definition "Cooperative" to "Cooperator" in section 102-36.40 and change applicable terminology throughout this part;
2. Define Certified Recycler, Federal Electronic Asset (FEA), Functional FEA, Non-Functional FEA, and Take Back Programs.
3. Change the Defense Reutilization and Marketing Office (DRMO) to Defense Logistics Agency Disposition Services (DLADS) (section 102-36.105);
4. Amend regulations regarding reporting and providing personal property to non-Federal recipients;
5. Modify restrictions for non-functional FEA when using the abandonment/destruction authority;
6. Add new requirements regarding public notice when abandoning/destroying excess personal property;

7. Add the new undesignated section heading "Federal Electronic Assets (FEA)" and ten new sections thereunder that would address which assets are considered FEA; disposal of functional FEA; disposal of non-functional FEA; sanitizing of FEA; disposing of FEA in landfills or through incineration; guiding recipients of FEA to environmentally-preferable disposal; disposal of overseas excess FEA; reporting requirements for FEA; submitting annual report information; and dissemination of information after it is reported.

8. Revise the Disposal Condition Codes from the numeric 1, 4 and 7 to alpha codes N, U, and R respectively.

9. Redesignate sections 102-36.375 through 102-36.475 as sections 102-36.425 through 102-36.525.

10. Make minor edits and clarifications to existing policies.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both

costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This proposed 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 proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553(a)(2) because it applies to agency management, personnel, and public property. However, this proposed rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review under 5 U.S.C. 801 since it does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 41 CFR Part 102-36

Government property management, Surplus Government property.

Dated: February 21, 2014.

Anne E. Rung,
Associate Administrator,
Office of Government-wide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR part 102-36 as set forth below:

PART 102-36—DISPOSITION OF EXCESS PERSONAL PROPERTY

1. The authority for part 102-36 continues to read as follows:

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

2. Amend § 102-36.40 by—

- a. Removing the definition "Cooperative";
- b. Removing from the definition "Cooperative agreement", in paragraphs (2) and (3), the word "cooperative" and adding "cooperator" in its place; and
- c. Adding, in alphabetical order, the definitions "Certified Recycler", "Cooperator", "Federal Electronic Asset (FEA)", "Functional FEA", "Non-Functional FEA", and "Take-Back Programs" to read as follows:

§ 102-36.40 What definitions apply to this part?

* * * * *

Certified Recycler means an entity that recycles, refurbishes, or both recycles and refurbishes used electronics and who has demonstrated to an accredited, independent third-party certification entity that they meet specific standards to safely recycle and manage electronics. These standards must also meet the criteria published by GSA. Once certified, the recycler is held to

the particular standard by oversight by the certifying entity.

* * * * *

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

* * * * *

Federal Electronic Asset (FEA) means equipment that is classified within certain designated classes or categories of electronic personal property which is powered by electricity and has logic circuitry enabling the item to perform its intended function. The classifications of assets defined as FEA under this part are listed in FMR Bulletin B-34 or succeeding Bulletins. (FMR Bulletins are located at gsa.gov/fmrbulletins).

* * * * *

Functional FEA means FEA with Disposal Condition Code N or U (see § 102-36.240).

* * * * *

Non-Functional FEA means FEA with Disposal Condition Code R, X or S (see § 102-36.240).

* * * * *

Take-Back Programs means a method of disposal where the asset is returned to a vendor or manufacturer and where

no funds or other form of consideration are returned to the Government for use under the exchange/sale authority.

* * * * *

§ 102-36.60 [Amended]

3. Amend § 102-36.60, paragraph (a) by removing the word "cooperatives" and adding the word "cooperators" in its place.

§ 102-36.105 [Amended]

4. Amend § 102-36.105, in the second sentence by removing "Defense Reutilization and Marketing Offices (DRMOs)" and adding "Defense Logistics Agency Disposition Services (DLADS)" in its place.

§ 102-36.150 [Amended]

5. Amend § 102-36.150, in the first sentence by removing the word "cooperatives" and adding the word "cooperators" in its place.

6a. Remove the undesignated center heading "Cooperatives" which appears before § 102-36.180 and add the undesignated center heading "Cooperators" in its place.

6b. Amend § 102-36.180 by revising the section heading to read as follows:

§102-36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperators?

§ 102-36.190 [Amended]

7. Amend § 102-36.190, paragraph (c), by removing "40 U.S.C. 483(d)(2)(E)" and adding "40 U.S.C. 525(c)(2)(A)" in its place.

§ 102-36.220 [Amended]

8. Amend § 102-36.220 by—

a. Removing from the second sentence of paragraph (a) the word "cooperatives" and adding the word "cooperators" in its place; and

b. Removing from paragraph (b)(3) "102-36.380" and adding "102-36.430" in its place.

§ 102-36.230 [Amended]

9. Amend § 102-36.230, by removing from paragraph (a), "Property Management Division (FBP)" and adding "Office of Personal Property Management (QSC)" in its place.

§ 102-36.240 [Amended]

10. Amend § 102-36.240 in the first column of the table by revising the numeric Disposal Condition Codes as follows:

a. Remove the number "1" and add the letter "N" in its place;

b. Remove the number "4" and add the letter "U" in its place; and

c. Remove the number "7" and add the letter "R" in its place.

11. Revise §102-36.300 to read as follows:

§ 102-36.300 How do we report personal property given to non-Federal recipients?

Submit your annual report of personal property given to non-Federal recipients by using the report template located at <https://gsa.inl.gov/property> within 45 calendar days after the close of each fiscal year.

§ 102-36.305 [Amended]

12. Amend §102-36.305 by removing the word "written".

§ 102-36.310 [Amended]

13. Amend §102-36.310 by removing the words "written finding" and adding the word "determination" in its place.

14. Amend §102-36.315 by adding paragraph (c) to read as follows:

§ 102-36.315 Are there any restrictions to the use of the abandonment/destruction authority?

* * * * *

(c) Any asset identified as non-functional FEA may only be transferred or sold to a certified recycler in accordance with § 102-36.385.

15. Amend § 102-36.330 by—

a. Removing the word "or" at the end of paragraph (b);

b. Removing from paragraph (c) "\$500" and adding "\$1000; or" in its place; and

c. Adding paragraph (d) to read as follows:

§ 102-36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?

* * * * *

(d) When abandonment or destruction of FEA or other electronics are directed to a certified recycler under provisions of this part.

§§ 102-36.375 through 102-36.475 [Redesignated as §§ 102-36.425 through 102.36-525]

16. Redesignate §§ 102-36.375 through 102-36.475 as §§ 102-36.425 through 102-36.525 respectively. A table is provided below.

<u>Old Section</u>	<u>New Section</u>
102-36.375	102-36.425
102-36.380	102-36.430
102-36.385	102-36.435
102-36.390	102-36.440
102-36.395	102-36.445
102-36.400	102-36.450

102-36.405	102-36.455
102-36.410	102-36.460
102-36.415	102-36.465
102-36.420	102-36.470
102-36.425	102-36.475
102-36.430	102-36.480
102-36.435	102-36.485
102-36.440	102-36.490
102-36.445	102-36.495
102-36.450	102-36.500
102-36.455	102-36.505
102-36.460	102-36.510
102-36.465	102-36.515
102-36.470	102-36.520
102-36.475	102-36.525

17. Add the undesignated center heading "Federal Electronic Assets (FEA)" and §§ 102-36.375 through 102-36.420 to read as follows:

FEDERAL ELECTRONIC ASSETS (FEA)

§ 102-36.375 What assets are considered Federal Electronic Assets (FEA)?

Refer to the definition in § 102-36.40. The list of assets classified as FEA will be updated as appropriate through revisions to FMR Bulletin B-34.

§ 102-36.380 How do I dispose of my functional FEA?

When disposing of functional FEA, use every opportunity to re-use these assets to the fullest extent possible using the disposal codes in this part (§ 102-36.240) and following the sequence of the Federal disposal program listed below:

(a) Re-use within the agency, including exchange or sale under the Exchange Sale authority (see 41 CFR part 102-39);

(b) Transfer to other Federal agencies (see subpart D of this part) or transfer to schools and educational organizations such personal property as eligible under E.O. 12999 and the Stevenson-Wydler Technology Innovation Act (see subpart F of this part);

(c) Donation through GSA to states and eligible nonprofit organizations (see 41 CFR part 102-37); or

(d) Sale to the public (see 41 CFR part 102-38).

§ 102-36.385 How do I dispose of my non-functional FEA or other electronic assets eligible for disposal under the abandonment/destruction authority?

(a) If you determine that your FEA is non-functional, you must, except as otherwise authorized by law, dispose of these assets through:

(1) Use of the Exchange Sale Authority where the sale is made only to certified recyclers, or where the exchange is made to vendors or manufacturers that solely use such certified recyclers when the asset is not returned to use as designed;

(2) Contracts or agreements with certified recyclers;

(3) Sales in which only certified recyclers can participate as buyers; or

(4) Manufacturer take-back programs that solely use certified recyclers when the asset is not returned to use as designed.

(b) Other electronic assets (non-FEA) disposed of under the abandonment/destruction authority (see §§ 102-36.305 through 102-36.330), should also be disposed of through a certified recycler using the methods in paragraph (a) of this section.

(c) You must perform due diligence in ensuring certified recyclers are meeting regulatory and legal requirements, consistent with the quantity and value of the property being disposed of.

(d) In circumstances where you are disposing of your FEA to a certified recycler via an intermediary transportation entity, you must perform due diligence,

consistent with the quantity and value of the property being disposed of, to ensure that all the FEA is being delivered to the intended certified recipients.

§ 102-36.390 If I use a certified recycler, am I still responsible for sanitizing my electronic assets?

Yes, you must develop consistent practices, using the National Institute of Standards (NIST) 800-8, "Guidelines for Media Sanitization," to clean hard drives and other storage devices in order to protect sensitive data and maximize reuse potential. This sanitization must be performed by your agency or by an entity acting as your agent. You may enter into an agreement with a certified recycler to perform these functions.

§ 102-36.395 Is disposing of FEA in a landfill or through incineration acceptable?

No. The Federal Government encourages reuse and recycling over disposal in landfills or by incineration because electronics are made of valuable resources and highly engineered materials such as metals (gold, silver, copper), plastics, and glass. Recycling these materials conserves our nation's resources and avoids air and water pollution, as well as greenhouse gas emissions that are caused during extraction and manufacturing of virgin materials.

§ 102-36.400 What steps must I take to guide recipients of functional FEA to environmentally-preferable disposal?

Each recipient of usable FEA should be guided towards ultimate disposal through a certified recycler. Agencies must use the following statement in documentation transferring ownership or custody of functional FEA, and the statement must also be apparent in any listing or advertisement of the FEA planned for disposal under any disposal option:

"This/these electronic product(s) must be disposed of at [its/]their end of useful life in accordance with all Federal, state, and local laws.

The Federal Government strongly encourages recycling these products through certified recyclers, even when such recycling is not required by Federal, state or local laws."

§ 102-36.405 How do I dispose of overseas excess FEA?

FEA located overseas and designated as foreign excess must follow § 102-36.440. However, any abandonment and destruction action should give preference to disposition through a certified recycler, when permissible under relevant foreign laws and regulations. All disposal actions for foreign excess must comply with the laws and environmental regulations of the host country.

§ 102-36.410 Are there reporting requirements for FEA?

Yes, you must submit an annual report on electronic assets given to non-Federal recipients, the Non-Federal Recipients Report, in accordance with § 102-36.300. This report captures disposal information regarding personal property provided or conveyed to non-Federal entities.

§ 102-36.415 How and when do I submit the report?

You must submit your annual report using the online reporting tool at <https://gsa.inl.gov/property>. The report should be submitted 45 days after the fiscal year for the fiscal year just concluded.

§ 102-36.420 What happens to this information after it is reported?

The information provided will be published on www.data.gov for transparency and public information.

Billing Code 6820-14

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