



GENERAL SERVICES ADMINISTRATION

41 CFR Parts 102-35, 102-36, 102-37, 102-38, 102-39, and 102-40

[FMR Case 2018-102-6; Docket No. GSA-FMR-2019-0007;

Sequence No.1]

RIN 3090-AJ98

Federal Management Regulation (FMR); Personal Property; Multiple Repeal or Replace Regulatory Actions; Multiple FMR Parts

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

ACTION: Proposed rule.

SUMMARY: The U.S. General Services Administration (GSA) is replacing, modifying, and consolidating provisions in multiple parts of the Federal Management Regulation (FMR), pursuant to an Executive Order, which requires agencies to make recommendations to the agency head regarding regulatory repeal, replacement, or modification, consistent with applicable law.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE**

OF PUBLICATION IN THE *FEDERAL REGISTER*] to be considered in the formation of the final rule.

ADDRESS: Submit comments in response to FMR Case 2018-102-6 by the following method:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal Rulemaking Portal by entering "FMR Case 2018-102-6" under the heading "Enter Keyword or ID" and select "Search." Select the link "Submit a Comment" that corresponds with "FMR Case 2018-102-6" and follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "FMR Case 2018-102-6" on your attached document.

Instructions: Please submit comments only and cite FMR Case 2018-102-6 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov> approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Garrett, Program Director, Office of Government-wide Policy, at 202-368-8163. Contact

the Regulatory Secretariat Division (MVCB), 1800 F Street N.W., Washington, DC 20405, 202-501-4755, for information pertaining to status or publication schedules. Please cite FMR Case 2018-102-6.

SUPPLEMENTARY INFORMATION:

A. Background

Executive Order (E.O.) 13777, 'Enforcing the Regulatory Reform Agenda,' was signed February 24, 2017. This E.O. tasked Executive Agencies to "evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law."

Under the guidance of E.O. 13777, GSA sought public comments on improving FMR regulations through a *Federal Register* Notice (MA-2017-03) published on May 30, 2017, at 82 FR 24651. Concurrently, GSA sought comments and recommendations from Federal agencies, GSA subject matter experts, and other stakeholders and customers.

The comments and recommendations elicited from the *Federal Register* notice were reviewed and categorized by GSA as "repeal", "replace", or "modify" actions. In accordance with the guidance in E.O. 13777, GSA prioritized repeal and replace actions as more important than the

modify actions. The comments and recommendations categorized as repeal and replace are addressed in this proposed rule. Two other repeal or replace recommendations addressing (1) agency asset management systems and (2) use of voluntary consensus standards were not included in this proposed rule as GSA determined that it does not have the legal authority to promulgate regulations addressing property in use by an agency before it is reported to GSA as excess.

Provisions in this proposed rule make the FMR policies addressing personal property management more understandable and easier to read. This proposed rule addresses the following:

1. Consolidation of duplicate occurrences of definitions across multiple FMR parts into FMR 102-35 for consistency in terminology and to avoid duplicative definitions in other parts of FMR Subchapter B. The FMR parts affected address personal property disposal activities including transfers among Federal agencies, donation of surplus property to eligible state and local donees, the sale of surplus property, and disposition of property requiring special handling;
2. Revisions to the donation program to incorporate legislation regarding museums (Pub. L. 114-287,

Section 23) to ensure consistency with Federal law. The donation program allows for the transfer of Federal surplus personal property to state agencies for surplus property for distribution to eligible recipients within their state; and

3. An amendment to policy in FMR 102-35.10 by listing FMR parts in this section related to personal property disposal in sequence so that the listing of FMR parts follows the general life-cycle processes related to asset management and disposal.

B. Executive Orders 12866 and 13563

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 a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

C. Executive Order 13771

This proposed rule is not subject to the requirements of E.O. 13771 because it is related to agency organization, management, or personnel.

D. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of 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 Procedures Act per 5 U.S.C. 553(a)(2), because it applies to agency management or public property.

E. Paperwork Reduction Act

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

F. Small Business Regulatory Enforcement Fairness Act

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

**List of Subjects in 41 CFR Parts 102-35, 102-36, 102-37,
102-38, 102-39 and 102-40**

Government property management.

Jessica Salmoiraghi,

Associate Administrator,

Office of Government-wide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR parts 102-35, 102-36, 102-37, 102-38, 102-39, and 102-40 as set forth below:

1. The authority for parts 102-35, 102-36, 102-37, 102-38, 102-39, and 102-40 continues to read as follows:

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

PART 102-35—DISPOSITION OF PERSONAL PROPERTY

2. Amend § 102-35.10 by revising paragraphs (e) thru (g) to read as follows:

§102-35.10 How are these regulations for the disposal of personal property organized?

* * * * *

(e) Utilization and disposal of personal property requiring special handling (part 102-40 of this subchapter B).

(f) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 102-41 of this subchapter B).

(g) Utilization, donation, and disposal of foreign gifts and decorations (part 102-42 of this subchapter B).

3. Amend § 102-35.20 by—

a. Adding, in alphabetical order, the definitions “Commerce Control List Items (CCLIs)” and “Demilitarization”;

- b. Revising the definitions "Excess personal property", "Exchange/sale", and "Executive agency";
- c. Adding, in alphabetical order, the definition of "Fair Market Value";
- d. Revising the definition "Federal agency";
- e. Adding, in alphabetical order, the definitions "Hazardous personal property", "Holding agency", and "Munitions List Items";
- f. Revising the definition "Personal property";
- g. Adding, in alphabetical order, the definition "State agency for surplus property (SASP)";
- h. Revising the definition "Surplus personal property"; and
- i. Adding, in alphabetical order, the definition "Surplus release date".

The additions and revisions read as follows:

§ 102-35.20 What definitions apply to GSA's personal property regulations?

* * * * *

Commerce Control List Item (CCLI) means property identified on the Commerce Control List (15 CFR part 774, Supp. 1) subject to export controls under the Export Administration Act of 1979, as amended (50 U.S.C. 4601 et seq.) and implemented by the Export Administration

Regulations (15 CFR part 730). Items may be placed on the list for reasons including, but not limited to, technology transfer, scarcity of materials, crime control, and national security.

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Demilitarization, as defined by U.S. Department of Defense (DoD) Manual 4160.28, Volume 2, is "[t]he act of eliminating the functional capabilities and inherent military design features from DoD personal property that requires certification and verification. Methods and degree range from removal and destruction of critical features to total destruction by cutting, crushing, shredding, melting, burning, etc. Demilitarization (DEMIL) is required to prevent property from being used for its originally intended purpose and to prevent the release of inherent design information that could be used against the United States. DEMIL applies to material in both serviceable and unserviceable condition."

Excess personal property (Excess) means any personal property under the control of any Federal agency that is no longer required for that agency's needs, as determined by the agency head or designee. An "agency's need" can include the use of the asset in an Exchange/Sale transaction to acquire similar replacement personal property.

Exchange/sale means the authority or process to exchange or sell personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property (see part 102-39 of this subchapter B for exchange/sale policy).

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

Fair market value means the best estimate of the gross sales proceeds if the property were to be sold in a public sale.

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 The Architect of the Capitol's direction).

* * * * *

Hazardous personal property means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6981),

or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601-2609).

Holding agency means the Federal agency having accountability for, and generally possession of, the property involved.

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Munitions List Items (MLIs) are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State.

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Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

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State agency for surplus property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

Surplus personal property (Surplus) means excess personal property no longer required by the Federal agencies as determined by GSA.

Surplus release date means the date when Federal screening has been completed and the excess property becomes surplus.

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PART 102-36-DISPOSITION OF EXCESS PERSONAL PROPERTY

§ 102-36.40 [Amended]

4. Amend § 102-36.40 by removing the definitions of "Commerce Control List Items (CCLIs)", "Demilitarization", "Excess personal property", "Exchange/Sale property", "Executive agency", "Fair market value", "Federal agency", "Hazardous personal property", "Holding agency", "Munitions List Items (MLIs)", "Personal property", "Surplus personal property (surplus)", and "Surplus release date".

PART 102-37-DONATION OF SURPLUS PERSONAL PROPERTY

§ 102-37.25 [Amended]

5. Amend § 102-37.25 by removing the definitions of "Holding agency", "State agency for surplus property (SASP)", "Surplus personal property (surplus property)", and "Surplus release date".

6. Amend appendix C to part 102-37, by revising the definition of "Museum" to read as follows:

Appendix C to Part 102-37-Glossary of Terms for Determining Eligibility of Public Agencies and Nonprofit Organizations

* * * * *

Museum means a public agency or nonprofit educational or public health 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; and cares for these objects. A museum is considered to be "attended by the public" if the museum, at minimum, accedes to any request submitted for access during business hours. 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.

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PART 102-38—SALE OF PERSONAL PROPERTY

§ 102-38.35 [Amended]

7. Amend § 102-38.35 by removing the definitions of "Estimated fair market value", "Holding Agency", "Personal property", and "State Agency for Surplus Property (SASP)".

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

§ 102-39.20 [Amended]

8. Amend § 102-39.20 by removing the definitions of "Excess property", "Exchange/sale", "Executive agency", and "Federal agency".

**PART 102-40—UTILIZATION AND DISPOSITION OF PERSONAL
PROPERTY WITH SPECIAL HANDLING REQUIREMENTS**

§ 102-40.30 [Amended]

9. Amend § 102-40.30 by removing the definitions of "Commerce Control List Item (CCLI)", "Demilitarization", and "Munitions List Item (MLI)".

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