

Federal Management Regulation

§ 102-39.30

you must meet the requirements in this part and in parts 101-33 and 101-42 of this title.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004]

§ 102-39.15 Why should I use the exchange/sale authority?

You should use the exchange/sale authority to:

(a) Reduce the cost of replacement personal property. If you have personal property that needs to be replaced, you can exchange or sell that property and apply the exchange allowance or sales proceeds to reduce the cost of similar replacement property. By contrast, if you choose not to replace the property using the exchange/sale authority, you may declare it excess and dispose of it through the normal disposal process. Any sales 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.

(b) Avoid costs (e.g., administrative and storage) that may be incurred when declaring the property to be replaced as excess and processing it through the normal disposal process. The normal disposal process may include abandonment or destruction, reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, or sale to the public. The time required to determine which of these options will apply and to complete the disposal transaction is likely to exceed the time required for an exchange/sale transaction.

§ 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.

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

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 property to be used in place of 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 property to be acquired.

Similar means where the acquired item and replaced item:

(1) Are identical;

(2) Are designed and constructed for the same purpose;

(3) Constitute parts or containers for identical or similar end items; or

(4) Fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 102-39.25 How do I request a deviation from this part?

See §§ 102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of this part.

Subpart B—Exchange/Sale Considerations

§ 102-39.30 When should I not use the exchange/sale authority?

You should not use the exchange/sale authority if the exchange allowance or

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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.

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§ 102-39.35 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.

§ 102-39.40 When should I arrange for a reimbursable transfer of exchange/sale property to a Federal agency or other eligible organization, or sell such property to a State Agency for Surplus Property?

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

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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.

[66 FR 48614, Sept. 21, 2001, as amended at 69 FR 11539, Mar. 11, 2004]

§ 102-39.45 What prohibitions apply to the exchange/sale of personal property?

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 4472 only).
- 51 Hand tools.
- 54 Prefabricated structure and scaffolding.
- 68 Chemicals and chemical products, except medicinal chemicals.
- 84 Clothing, individual equipment, and insignia.

NOTE TO § 102-39.45(a): The exception to the prohibition is Department of Defense (DOD) property in FSC Groups 10, 12, and 14 (except FSC Class 1005) 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).

(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