

**§ 101-44.119 [Reserved]****Subpart 101-44.2—Donations to Public Agencies and Eligible Nonprofit Tax-Exempt Activities****§ 101-44.200 Scope of subpart.**

This subpart prescribes the authorities, responsibilities, policies and methods governing the donation of surplus personal property within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands to eligible recipients as established in § 101-44.207.

[53 FR 16112, May 5, 1988]

**§ 101-44.201 Authority.**

(a) Section 203(j)(1) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484) (hereinafter called the act), gives the Administrator of General Services discretionary power to prescribe the necessary regulations for, and to execute, the surplus property donation program. This authority empowers the Administrator to transfer executive agency controlled surplus property to the agency of each State government designated under State law to be responsible for all property transferred in accordance with this subpart and subpart 101-44.4.

(b) The property which may be transferred for donation includes all personal property which has been determined to be donable as defined in § 101-44.001-3.

[53 FR 16112, May 5, 1988]

**§ 101-44.202 State agency plan of operation.**

Section 203(j)(4) of the act provides that State agencies shall be established and operated in accordance with detailed plans developed according to State law and conforming with provisions of the act. A State must have its plan of operation approved by the Administrator before it may have property transferred to it. The plan must assure that the State agency has the necessary organizational and oper-

ational authority and capability, including staff, facilities, means and methods of financing, and procedures with respect to: Accountability, internal and external audits, cooperative agreements, compliance and utilization reviews, equitable distribution and property disposal, determination of eligibility, and assistance through consultation with advisory bodies and public and private groups.

(a) *State action.* The State plan of operation shall be developed by the State legislature, certified by the chief executive officer of the State, and submitted to the Administrator for acceptance.

(b) *General notice.* In accordance with the act no plan of operation and no major amendment thereof shall be filed with the Administrator until 60 calendar days after general notice of the proposed plan has been published, and interested persons have been given at least 30 calendar days during which to submit comments. In developing and implementing the plan the State shall take into consideration the relative needs and resources of all public agencies and other eligible institutions within the State. Assurance shall be provided in the State plan that such public notice and such time for public comment was provided prior to submission of the plan and that such consideration of relative needs and resources of all donees in the State was given in the preparation of the plan.

(c) *Specific assurances.* A State plan for the establishment and operation of a State agency for surplus property distribution to eligible donees shall provide the following information and assurances. (A State may include in its plan other provisions not inconsistent with the purposes of the act and the requirements of this part 101-44):

(1) *Authority.* The chief executive officer of the State shall submit the State plan of operation to the Administrator as follows:

(i) The chief executive officer shall submit the plan and certify that the State agency is authorized thereby to acquire, warehouse, and distribute surplus property to all eligible donees in the State, to enter into cooperative agreements pursuant to the provisions of § 101-44.206, and to undertake other

actions and provide other assurances as are set forth in the plan of operation; and

(ii) Copies of existing State statutes and/or executive orders relative to the operational authority of the State agency shall accompany the State plan. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the State plan shall include also the opinion of the State's Attorney General regarding the existence of such authority.

(2) *Designation of State agency.* The plan shall designate a State agency which will be responsible for administering the plan throughout the State. The plan shall describe the responsibilities vested in the agency and shall provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. The plan shall also indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.

(3) *Inventory control and accounting systems.* The State plan shall require the State agency to use a management control and accounting system that will effectively govern the utilization, inventory control, accountability, and disposal of donable surplus property. The plan shall set forth the details of the inventory control and accounting system which will be used by the State agency.

(4) *Return of donated property.* The State plan shall require and set forth procedures for donees to return donable property to the State agency if such property while still usable, as determined by the State agency, has not been placed in use for the purposes for which it was donated within 1 year of donation or ceases to be used by the donee for such purposes within 1 year of being placed in use.

(5) *Financing and service charges.* The State plan shall set forth the means and methods by which the State agency will be financed. When the State agency is authorized to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the

method of establishing the charges shall be set forth in the plan. The charges shall be fair and equitable and based on services performed by the State agency, including but not limited to screening, packing, crating, removal, and transportation. When the State agency provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the charge levied by the State agency shall be minimal. The State plan shall provide for minimal charges to be assessed in such cases and include the bases of computation. When property is made available to nonprofit providers of assistance to homeless individuals, the State plan shall provide for this property to be distributed at a nominal cost for care and handling of the property. The plan of operation shall set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds, are to be used for the operation of the State agency and the benefit of participating donees. Service charge funds may be used to cover direct and indirect costs of the State agency's operation, to purchase necessary equipment, and to maintain a reasonable working capital reserve. Such funds may be deposited or invested as permitted by State law, provided the plan of operation sets forth the types of depositories and/or investments contemplated. Service charge funds may be used for rehabilitating donable surplus property, including the purchase of replacement parts. Subject to State authority and the plan of operation, the State agency may expend service charge funds to acquire or improve office or distribution center facilities. When such acquisition or improvements are contemplated, the plan shall set forth what disposition is to be made of any financial assets realized upon the sale or other disposal of the facilities. When refunds of service charges in excess of the State agency's working capital reserve are to be made to participating donees, the plan shall so state and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.

(6) *Terms and conditions on donable property.* The State plan shall require the State agency to impose terms, conditions, reservations, and restrictions on the donee in the case of any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. The specific terms, conditions, reservations, and restrictions which the State agency requires shall be set forth in the plan. In addition, the State plan shall provide that the State agency may impose reasonable terms, conditions, reservations, and restrictions on the use of donable property other than items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles. Any such additional terms, conditions, reservations, and restrictions which the State agency elects to impose should be set forth in the plan. The State agency may amend, modify, or release such terms, conditions, reservations, or restrictions subject to the provisions of § 101-44.208(g), provided it sets forth in the plan the standards by which the State agency will grant any such amendments, modifications or releases. The State plan also shall provide assurance that the State agency will impose on the donation of a surplus item or items, regardless of unit acquisition cost, such conditions involving special handling or use limitations as the Administrator may determine necessary because of the characteristics of the property, pursuant to § 101-44.108.

(7) *Nonutilized donable property.* The State plan shall provide that donable surplus property in the possession of the State agency which cannot be utilized by donees in the State shall be disposed of:

(i) Subject to the disapproval of the Administrator within 30 days after notice to him, through transfer by the State agency to another State agency or through abandonment or destruction where the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from sale (Transfers of nonutilized donable property and destruction or abandonment shall be accomplished by the State agency in accordance with the provisions of § 101-44.205); or

(ii) Otherwise, under such terms and conditions and in such a manner as may be prescribed by the Administrator pursuant to the provisions of § 101-44.205.

(8) *Fair and equitable distribution.* The State agency is responsible for the fair and equitable distribution of surplus personal property through donation to all eligible donees in the State. The State plan shall provide for distribution based on the relative needs and resources of public agencies and other eligible institutions and their abilities to utilize the property. The State plan shall set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. The State plan shall also require that the State agency, insofar as practicable, select property requested by a public agency or other eligible institution and, when so requested by the recipient, arrange for shipment of the property direct to the recipient.

(9) *Eligibility.* The State plan shall set forth procedures for the State agency to determine the eligibility of applicants for the donation of surplus personal property. Standard and guidelines for the determination of eligibility are provided in § 101-44.207.

(10) *Compliance and utilization.* The State agency shall effect utilization reviews for compliance by donees with the terms, conditions, reservations, and restrictions imposed by the State agency for any item of property having a unit acquisition cost of \$5,000 or more and any passenger motor vehicle. Such reviews also shall include a review of compliance by the donees with any special handling conditions or use limitations imposed on items of property by the Administrator, pursuant to § 101-44.108. The State plan shall set forth the provisions for and the proposed frequency of such reviews and shall provide adequate assurances that effective action shall be taken by the State agency to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions. Reports on utilization reviews and compliance actions shall be prepared by the State agency. The State plan shall provide adequate assurance that the State agency shall initiate appropriate investigations of alleged fraud

in the acquisition of donated property or misuse of such property. The State agency shall immediately notify the Federal Bureau of Investigation (FBI) and GSA of any case involving alleged fraud. Further, GSA shall be advised of any misuse of donated property. The State agency shall assist GSA or other responsible Federal or State agencies in investigating such cases upon request.

(11) *Consultation with advisory bodies and public and private groups.* The State plan shall provide for consultation by the State agency with advisory bodies and public and private groups which can assist the State agency in determining the relative needs and resources of donees, the proposed utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees. Details of how the State agency will accomplish such consultation shall be set forth in the plan.

(12) *Audit.* The State plan shall provide for periodic internal audits of the operations and financial affairs of the State agency and compliance with the external audit requirements of Office of Management and Budget Circular No. A-128 "Audits of State and Local Governments." The State agency must provide the appropriate GSA regional office with two copies of any audit report made pursuant to the Circular, or with copies of those sections that pertain to the Federal donation program. An outline of the corrective actions which the State agency will take to comply with any exceptions or violations indicated by the audit, and the scheduled completion dates for these actions, must be submitted with the audit report. Periodically, GSA representatives may visit the State agency to coordinate program activities and review the State agency operations. GSA may, for appropriate reasons, conduct its own audit of the State agency following due notice to the chief executive officer of the State of the reasons for such audit. Financial records and all other books and records of the State agency shall be made available for inspection by representatives of GSA, the General Accounting Office, or other authorized Federal activities.

(13) *Cooperative agreements.* Section 203(n) of the act authorizes the Administrator (or the head of any Federal agency designated by him) to enter into cooperative agreements with State surplus property distribution agencies. The provisions of section 203(n) and the implementing regulations are set forth in §101-44.206. A State agency desiring to enter into such cooperative agreements or to renew or revise existing agreements shall affirm its intentions in the State plan and cite the authority called for in §101-44.202(c)(1).

(14) *Liquidation.* The State plan shall provide for the submission of a liquidation plan to the Administrator when a determination is made to liquidate the State agency. The liquidation plan shall be submitted before the actual termination of the State agency activities and shall include:

- (i) Reasons for the liquidation;
- (ii) A schedule for liquidating the agency and the estimated date of termination;
- (iii) Method of disposing of surplus property on hand, consistent with the provisions of §101-44.205;
- (iv) Method of disposing of the agency's physical and financial assets;
- (v) Retention of all available books and records of the State agency for a 2-year period following liquidation; and
- (vi) 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.

(15) *Forms.* Copies of distribution documents used by the State agency shall be included in the State plan.

(16) *Records.* The State plan shall provide for the retention of official records of the State agency for a period of not less than 3 years, provided that in cases involving property subject to restrictions for more than 2 years, records shall be kept 1 year beyond the specified period of restriction. In cases in which property is in compliance status at the end of the period of restriction, the State plan shall provide for the retention of the records for at least 1 year after the case is closed.

(d) *Implementation.* (1) A State plan of operation developed by the State legislature and certified by the chief executive officer of the State shall be in effect and binding upon the State beginning with the date that the Administrator notifies the chief executive officer of the State that the plan conforms to the provisions of section 203(j)(4) of the act and the requirements of this part 101-44 and that allocation and transfer of donable surplus property to the State agency will commence. Such plan of operation shall remain in effect until such time as the Administrator may accept revisions.

(2) GSA may, from time to time, propose modifications or amendments to the provisions of this part 101-44. In such cases, reasonable opportunity will, insofar as practicable, be afforded the State agencies to conform to any such regulatory changes affecting their operations.

(e) *Nonconformance.* When the Administrator determines that a State plan does not conform to the requirements of the act or the provisions of this part 101-44, or subsequently that the State agency does not operate in accordance with the provisions of the plan, allocation and transfer of surplus donable property may be withheld until the nonconformance is corrected.

[42 FR 56003, Oct. 20, 1977; 42 FR 61043, Dec. 1, 1977, as amended at 53 FR 11612, May 5, 1988; 53 FR 47197, Nov. 22, 1988]

**§ 101-44.203 Allocation of donable property.**

Allocation of donable property will be made by GSA on a fair and equitable basis. The following criteria will be applied by GSA in effecting allocation and transfer of surplus personal property among the States:

(a) Need and usability of property as reflected in selections of property by a State agency, including expressions of need and interest on the part of public agencies or other eligible donees within the State, transmitted through the State agency to GSA. Special consideration will be given by GSA to requests transmitted through the State agency by eligible donees for specific items of property.

(b) Regions or States in greatest need of the type of property to be allocated, where a particular and important need is evidenced by a justification accompanying the expression of need.

(c) Extraordinary needs occasioned by disasters.

(d) The quantity of property of the type under consideration which was previously allocated to or is potentially available to a State agency from a more advantageous source.

(e) Performance of a State agency in effecting timely pickup or removal of property allocated to the State and approved for transfer by GSA.

(f) Performance of a State agency in effecting prompt distribution of property to eligible donees.

(g) Equitable distribution based on the existing condition as well as the original acquisition cost of the property available for donation.

(h) Equitable distribution based on the ratio of population and per capita income of each State.

**§ 101-44.204 Certification and agreement by a State agency.**

(a) *Certification.* A State agency, in making a request to GSA for the transfer of donable surplus personal property, shall certify that:

(1) It is the agency of the State designated under State law, and as such has legal authority within the meaning of section 203(j) of the act and GSA regulations, to receive surplus property for distribution within the State to eligible donees within the meaning of the act and GSA regulation;

(2) The property is usable and needed by a public agency for one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, public safety, and programs for older individuals, by an eligible nonprofit organization or institution which is exempt from taxation in the State under section 501 of the Internal Revenue Code of 1954, for the purpose of education or public health (including research for any such purpose) or by an eligible nonprofit tax-exempt activity for programs for older individuals;