

(3) When property is picked up by or shipped to a State agency, it has available adequate funds, facilities, and personnel to effect accountability, warehousing, proper maintenance, and distribution of the property; and

(4) When property is distributed by a State agency to a donee, or when delivery is made direct from a holding activity to a donee, the donee acquiring the property is eligible within the meaning of the act and GSA regulations, and that the property is usable and needed by the donee.

(b) *Agreement.* With respect to donable property picked up by or shipped to a State agency, the State agency shall agree to the following:

(1) The right to possession only is granted and the State agency will make prompt statewide distribution of the same, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the act and GSA regulations, after such eligible donees have properly executed the appropriate certifications and agreements established by the State agency and/or GSA.

(2) Title to the property shall remain in the United States of America although the State shall have taken possession thereof. Conditional title to the property shall pass to the eligible donee when the donee executes the certifications and appropriate agreements required by the State agency and has taken possession of the property.

(3) The State agency shall:

(i) Pay promptly the cost of care, handling, and shipping incident to taking possession of the property;

(ii) During the time that title remains in the United States of America, be responsible as a bailee for mutual benefit for the property from the time it is released to the State agency or to the transportation agent designated by the State agency; and

(iii) In the event of any loss of or damage to any or all of the property, file a claim and/or institute and prosecute to conclusion the proceedings necessary to recover for the account of the United States of America the fair market value of any of the property lost or damaged.

(4) Surplus property hereafter approved for transfer by GSA for donation shall not be retained by the State

agency for use in performing its functions unless the use of such property is authorized by GSA in accordance with the provisions of a cooperative agreement entered into between the State agency and GSA.

(c) *Interstate distribution.* Where an applicant State agency is acting under an interstate distribution agreement approved by GSA as an agent and authorized representative of an adjacent State with which it shares a common boundary the certifications and agreements required above shall also be made by the applicant State agency respecting the donees in the adjacent State to which distribution will be made and the property to be distributed in the adjacent State, and these certifications and agreements shall constitute the certifications and agreements of the adjacent State on whose behalf and as whose authorized representative the applicant State agency is acting.

[42 FR 56003, Oct. 20, 1977, as amended at 45 FR 56809, Aug. 26, 1980; 53 FR 16114, May 5, 1988]

**§ 101-44.205 Property in the possession of a State agency.**

(a) *Status.* Title to all donable property located in a State agency distribution center is vested in the United States of America. The right to possession only is granted to the State agency. The State agency may disassemble or cannibalize an item of donable property in its possession when it determines that the usable parts and components thereof have greater donation potential than that for which the complete item was originally manufactured. The State agency may retain and use surplus personal property in its possession for the purpose of performing its functions pursuant to the provisions of § 101-44.206.

(b) *Protection.* During the time title remains in the United States of America the State agency shall:

(1) Be responsible as a bailee for mutual benefit for surplus personal property transferred to it by GSA from the time it is released to the State or to the transportation agent designated by the State, and in the event of any loss of or damage to any or all of the property, the State agency shall promptly

notify GSA and file a claim and/or institute and prosecute to conclusion the proceedings that are necessary to recover, for the account of the United States of America, the fair market value of any property lost or damaged, less the cost of care and handling incurred by the State agency in acquiring the property;

(2) Maintain adequate provision for protecting property in its custody including protection against the hazards of fire, theft, vandalism, and weather; and

(3) Promptly notify appropriate law officials including the FBI and GSA of any damage to or loss of property in its custody due to theft, vandalism, arson, or other unusual circumstances and shall provide full information concerning the circumstances. GSA shall be informed of any other types of damages to or loss of property which is in the possession of the State agency.

(c) *Insurance.* It is GSA policy not to require a State agency to carry insurance as a condition for acquiring Federal surplus personal property for distribution to eligible recipients. However, when a State agency carries insurance against damage to or loss of property due to fire or other hazards and when loss of or damage to Federal surplus personal property occurs, GSA, on behalf of the United States of America, will be entitled to reimbursement from the State agency of the fair market value of the damaged or destroyed Federal property payable from the insurance proceeds, less the State agency's actual cost of acquiring and rehabilitating the property prior to its damage or destruction.

(d) *Distribution.* Surplus personal property in the custody of a State agency shall be distributed promptly to eligible donees within the State.

(e) *Direct shipment.* In order to reduce inventory, warehousing, and transportation costs and to ensure prompt utilization of donable surplus property, the State agency shall, insofar as practicable, when requested by the designated donee, arrange for or provide shipment of the property from the Federal holding agency direct to the recipient.

(f) *Transfer between States.* When a State agency determines that surplus

personal property in its possession cannot be utilized by eligible recipients within the State, it shall offer the property for transfer to surplus property agencies in other States. GSA encourages prompt transfer of property between the States. A State agency may arrange for visits to its distribution facilities by representatives of other State surplus property agencies to inspect and select unneeded property available for transfer. GSA regional offices, upon request, will assist in making known to other States unneeded property in one State which is available for transfer and in arranging and coordinating visits between State agencies. Transfers of property between States will be accomplished by processing SF 123, Transfer Order Surplus Personal Property, submitted by the requesting State through the GSA regional office for the releasing State. Transfers of unneeded surplus property between State agencies are subject to the disapproval of the Administrator within 30 days after notice to him.

(g) *Reporting unneeded property.* A State agency at any time may report unneeded usable property in its possession which is not required for transfer to another State in the GSA regional office for redistribution or disposal. In reporting property to GSA, the State agency shall:

(1) Provide the best possible description of each line item of property and its current condition code, quantity, and unit total acquisition cost;

(2) Identify the date of receipt by the State agency of each line item of property listed;

(3) Indicate those items which the State agency believes may be of interest to Federal agencies; and

(4) Provide certification of reimbursement claimed for each line item.

(h) *Reutilization.* Based on the information provided by the State agency, the GSA regional office may offer available property for recovery by Federal agencies. Any transfer order for that property will be approved by GSA and forwarded to the releasing State agency for appropriate action.

(i) *Disposal.* Sale of undistributed property in the possession of a State agency will be initiated by the GSA regional office in accordance with the

provisions of part 101-45. The GSA regional office will inform the State agency of the items to be sold and will work closely with the State agency in the preparation and prompt completion of the sale. Property available for sale may be turned in by a State agency to a GSA property or sales center with the approval of the GSA regional office which operates the center.

(j) *Reimbursement.* Reimbursement for costs of care and handling to a State agency with respect to the transfer or disposal of donable property in its possession will be authorized by GSA as follows:

(1) When a State agency acquires donable property by transfer from another State agency, reimbursement of costs incurred by the releasing State agency in acquiring the property, including packing, handling, and transportation costs, shall be established by mutual agreement between the two State agencies.

(2) When a Federal activity requests property from a State agency, costs incurred by the State agency in acquiring the property, including packing, handling, and transportation costs, shall be reimbursable at the time the property is transferred to the Federal activity. The SF 122 used in effecting the transfer must show the amount of reimbursement claimed by the releasing State agency.

(3) When donable property in the possession of a State agency is required for disaster assistance, reimbursement to the State agency will be governed by the provisions of § 101-44.105.

(4) When disposing of undistributed property in the possession of a State agency by public sale, GSA may authorize reimbursement to the State agency for expenses related to care and handling incurred by the State agency in acquiring the property from within or outside the United States. Certification by the State agency of costs incurred is required and must be supported by documentation if requested by GSA. Reimbursement must not exceed the proceeds from the sale of the property. No reimbursement may be made to the State agency for actions subsequent to the receipt of property by the State agency from any source, including unloading, moving, repair-

ing, preserving, or storing. Reimbursement will not be authorized by GSA for property acquired from any source if the property has been in the possession of the State agency for a period of 2 years from the date it was received by the State agency until the date it was reported to GSA for disposal. Costs of transporting property to a location outside a State agency distribution facility are not reimbursable unless transportation was specifically required by GSA. The sale of property at a location outside the State distribution facility, however, does not preclude authorized reimbursement to the State agency. Reimbursement is limited to:

(i) Direct costs incurred by the Federal holding agency and billed to and paid by the State agency, including but not limited to packing, preparation for shipment, and loading; and

(ii) Transportation costs paid or otherwise incurred by the State agency and not reimbursed by a donee to the State agency for initially moving the property from the Federal holding agency to the State agency distribution facility or other point of receipt designated by the State agency.

(k) *Abandonment or destruction.* When a GSA regional office finds that a State agency has property in its possession that is unusable, the State agency may be instructed to proceed promptly with the abandonment or destruction of such property in accordance with the findings and the processes prescribed in subpart 101-45.9.

[42 FR 56003, Oct. 20, 1977, as amended at 53 FR 16114, May 5, 1988]

#### § 101-44.206 Cooperative agreements.

This section provides policies and procedures for the establishment of cooperative agreements between GSA (or the head of any Federal agency designated by the Administrator of General Services) and a State agency for the use of property, facilities, personnel, and services, with or without payment or reimbursement and under the provisions of a cooperative agreement, for the use by the State agency of any surplus personal property in its possession subject to conditions imposed by the Administrator.