

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

January 15, 2009

FEDERAL MANAGEMENT REGULATION  
Amendment 2009-01

TO: Heads of Federal agencies

SUBJECT: FMR Case 2008-102-2, Utilization, Donation, and  
Disposal of Foreign Gifts and Decorations

1. Purpose. This document includes pages that reflect amendments to Part 102-42 of the Federal Management Regulation (FMR).

2. Background. This final rule amends part 102-42 of the FMR (41 CFR part 102-42) to bring this policy into alignment with 5 U.S.C. 7342 by placing the responsibility and guidelines for obtaining appraisals for foreign gifts and decorations onto the agencies (as required by 5 U.S.C. 7342(g)(2)(b)). Removing the policies from this part that specify the format and content of an appraisal will give agencies greater flexibility in obtaining appraisals. This flexibility may include agency use of reliable retail Web sites (e.g., Department store Web sites) to obtain the retail value in the United States of the items(s). This final rule also amends section 102-42.95.

GSA published FMR Amendment 2009-01, FMR Case 2008-102-2, final rule in the *Federal Register*, at 74 FR 2395, January 15, 2009.

3. Effective date. February 17, 2009.

4. Explanation of changes. The GSA amended the FMR to revise its policy on appraisals of foreign gifts and decorations, and to encourage agencies to use various methods in obtaining appraisals, including reliable retail Web sites.

5. Filing instructions. Make the following page changes:

Remove FMR pages

Part 102-42 TOC  
pp. 102-42-i and 102-42-ii  
102-42-1 thru 102-42-6

Insert FMR pages

Part 102-42 TOC  
pp. 102-42-i and 102-42-ii  
102-42-1 thru 102-42-6



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# AMENDMENT 2009–01 FEBRUARY 17, 2009

## PART 102-42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Sec.

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**PART 102-42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS**

**Subpart A—General Provisions**

**§102-42.5—What does this part cover?**

This part covers the acceptance and disposition of gifts of more than minimal value and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government, you should refer to [§102-36.405](#) of this subchapter B.

**Definitions**

**§102-42.10—What definitions apply to this part?**

The following definitions apply to this part:

“Decoration” means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

“Employee” means:

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C. 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition of “employee” (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of “employee.”

“Employing agency” means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibili-

ties specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

“Foreign government” means:

(1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;

(2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and

(3) Any agent or representative of any such foreign government unit or organization while acting as such.

“Gift” means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

“Minimal value” means a retail value in the United States at the time of acceptance of \$335 or less, except that GSA will adjust the definition of minimal value in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

**Care, Handling and Disposition**

**§102-42.15—Under what circumstances may an employee retain a foreign gift or decoration?**

Employees, with the approval of their employing agencies, may accept and retain:

(a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property of the U.S. Government, not the employee, and must be reported.

(b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

**§102-42.20—What is the typical disposition process for gifts and decorations that employees are not authorized to retain?**

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

(1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.

(2) The employing agency determines if it will keep the gift or decoration for official use.

(3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under [§102-42.95](#).

(4) If GSA does not transfer the gift or decoration during Federal utilization screening, the employee may purchase the gift or decoration (see [§102-42.140](#)).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under [part 102-37](#) of this subchapter B.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under [part 102-38](#) of this subchapter B.

(b) *Monetary gifts.* When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or

(ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

**§102-42.25—Who retains custody of gifts and decorations pending disposal?**

(a) The employing agency retains custody of gifts and decorations that employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which employees decline to purchase, or decorations that are not retained for official use or returned to donors.

**Note to [§102-42.25\(b\)](#):** GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101-42 of this title.

**§102-42.30—Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?**

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

**§102-42.35—Can the employing agency be reimbursed for transfers of gifts and decorations?**

No, all transfers of gifts and decorations to Federal agencies or donation through SASPs will be without reimbursement. However, the employing agency may require the receiving agency to pay all or part of the direct costs incurred by the employing agency in packing, preparation for shipment, loading, and transportation.

**Appraisals****§102-42.40—When is an appraisal necessary?**

An appraisal is necessary when—

(a) An employee indicates an interest in purchasing a gift or decoration. In this situation, the appraisal must be obtained before the gift or decoration is reported to GSA for screening (see [102-42.20](#)); or

(b) GSA requires the employing agency to obtain an appraisal of a gift or decoration that the agency has retained for official use and no longer needs before accepting the agency's report of the item as excess personal property; or

(c) The policy of one's own agency requires it, pursuant to 5 U.S.C. 7342(g).

**Note to [§102-42.40](#) paragraphs (a) and (b):** Refer to [§102-42.50](#) for how appraisals under these two situations are handled.

**§102-42.45—What is my agency's responsibility for establishing procedures for obtaining an appraisal?**

The employing agency is responsible for establishing its own procedure for obtaining an appraisal that represents the value of the gift in the United States. This applies to all gifts, even when the recipient wishes to retain and/or purchase the gift. Appraisals are required for gifts that are personalized (e.g., Books signed by the author, Gifts personally labeled).

**§102-42.50—What types of appraisals may my agency consider?**

Your agency may allow—

(a) Written commercial appraisals conducted by an appraisal firm or trade organization; and

(b) Retail value appraisals where the value of the gift may be ascertained by reviewing current and reliable non-discounted retail catalogs, retail price lists, or retail Web site valuations.

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## §102-42.55—What does the employing agency do with the appraisal?

When an appraisal is necessary under [§102-42.40](#), the employing agency must include the appraisal with the Standard Form (SF) 120, Report of Excess Personal Property, and send it to GSA in accordance with the requirements of [§102-42.95](#). By attaching the appraisal, the employing agency is certifying that the value cited is the retail value/appraised value of the item in the United States in U.S. dollars on the date set forth on the appraisal.

### Special Disposals

## §102-42.60—Who is responsible for gifts and decorations received by Senators and Senate employees?

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Commission on Art and Antiquities of the United States Senate under 5 U.S.C. 7342(e)(2). GSA is responsible for disposing of gifts or decorations received by Members and employees of the House of Representatives.

## §102-42.65—What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

If the Commission on Art and Antiquities does not dispose of a gift or decoration, then it must be reported to GSA for disposal. If GSA does not dispose of a gift or decoration within one year of the Commission's reporting, the Commission may:

- (a) Request that GSA return the gift or decoration and dispose of it itself; or
- (b) Continue to allow GSA to dispose of the gift or decoration in accordance with this part.

## §102-42.70—Who handles gifts and decorations received by the President or Vice President or a member of their family?

The National Archives and Records Administration normally handles gifts and decorations received by the President and Vice President or a member of the President's or Vice President's family.

## §102-42.75—How are gifts containing hazardous materials handled?

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 101-42 of this title.

## Subpart B—Utilization of Foreign Gifts and Decorations

## §102-42.80—To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this subpart refers to the employing agency.

## §102-42.85—What gifts or decorations must we report to GSA?

You must report to GSA gifts of more than minimal value, except for monetary gifts that have no historic or numismatic value (see [§102-42.20](#)), or decorations the employee is not authorized to retain that are:

- (a) Not being retained for official use or have not been returned to the donor; or
- (b) Received by a Senator or a Senate employee and not disposed of by the Commission on Art and Antiquities of the United States Senate.

## §102-42.90—What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

Non-monetary gifts or decorations that were retained for official use must be reported to GSA as excess property within 30 days after termination of the official use.

## §102-42.95—How do we report gifts and decorations as excess personal property?

You must complete a Standard Form (SF) 120, Report of Excess Personal Property, and send it to the General Services Administration, Utilization and Donation Program Division (QSCA), Washington, DC 20406. Conspicuously mark the SF 120, “FOREIGN GIFTS AND/OR DECORATIONS”, and include the following information:

Entry	Description
(a) Identity of Employee	Give the name and position of the employee.
(b) Description of Item	Give a full description of the gift or decoration, including the title of the decoration.
(c) Identity of Foreign Government	Give the identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration.
(d) Date of Acceptance	Give the date the gift or decoration was accepted by the employee.
(e) Appraised Value	Give the appraised value in United States dollars of the gift or decoration, including the cost of the appraisal. (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.)
(f) Current Location of Item	Give the current location of the gift or decoration.

Entry	Description
(g) Employing Agency Contact Person	Give the name, address, and telephone number of the accountable official in the employing agency.
(h) Purchase Interest or Donation Recommendation	Indicate whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee.
(i) Administration	Give the Administration in which the gift or decoration was received (for example, Clinton Administration).
(j) Multiple Items	Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (for example, a tea set, a necklace and matching earrings) as a single line item.

**§102-42.100—How can we obtain an excess gift or decoration from another agency?**

To obtain an excess gift or decoration from another agency, you would complete a Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, for the desired item(s) and submit the form to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

**§102-42.105—What special information must be included on the SF 122?**

Conspicuously mark the SF 122, "FOREIGN GIFTS AND/OR DECORATIONS", and include all information furnished by the employing agency as specified in [§102-42.95](#). Also, include on the form the following statement: "At such time as these items are no longer required, they will be reported to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, and will be identified as foreign gift items and cross-referenced to this transfer order number."

**§102-42.110—How must we justify a transfer request?**

You may only request excess gifts and decorations for public display or other bona fide agency use and not for the personal benefit of any individual. GSA may require that transfer orders be supported by justifications for the intended display or official use of requested gifts and decorations. Jewelry and watches that are transferred for official display must be displayed with adequate provisions for security.

**§102-42.115—What must we do when the transferred gifts and decorations are no longer required for official use?**

When transferred gifts and decorations are no longer required for official use, report these gifts and decorations to the GSA as excess property on a SF 120, including the original transfer order number or a copy of the original transfer order.

**Subpart C—Donation of Foreign Gifts and Decorations**

**§102-42.120—When may gifts or decorations be donated to State agencies?**

If there is no Federal requirement for the gifts or decorations, and if gifts were not sold to the employee, GSA may make the gifts or decorations available for donation to State agencies under this subpart and [part 102-37](#) of this subchapter B.

**§102-42.125—How is donation of gifts or decorations accomplished?**

The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (e.g., units of State or local governments and eligible non-profit organizations) by:

(a) Completing a Standard Form (SF) 123, Transfer Order Surplus Personal Property, and submitting it to General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 123 with the words, "FOREIGN GIFTS AND/OR DECORATIONS."

(b) Attaching an original and two copies of a letter of intent to each SF 123 submitted to GSA. An authorized representative of the proposed donee must sign and date the letter, setting forth a detailed plan for use of the property. The letter of intent must provide the following information:

(1) Identifying the donee applicant, including its legal name and complete address, its status as a public agency or as an eligible nonprofit tax-exempt activity, and the name, title, and telephone number of its authorized representative;

(2) A description of the gift or decoration requested, including the gift's commercially appraised value or estimated fair market value if no commercial appraisal was performed; and

(3) Details on the planned use of the gift or decoration, including where and how it will be used and how it will be safeguarded.

**§102-42.130—Are there special requirements for the donation of gifts and decorations?**

Yes, GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or incorporate by reference the following:



(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) There must be a period of restriction which will expire after the gift or decoration has been used for the purpose stated in the letter of intent for a period of 10 years, except that GSA may restrict the use of the gift or decoration for such other period when the inherent character of the property justifies such action.

(c) The donee must allow the right of access to the donee's premises at reasonable times for inspection of the gift or decoration by duly authorized representatives of the SASP or the U.S. Government.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Do or allow anything to be done that would contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the period of restriction, the donee must promptly notify the General Services Administration, Property Management Division (FBP), Washington, DC 20406, through the SASP, and upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP, and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the period of restriction, the SASP may demand return of the gift or decoration and, upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay to the U.S. Government the fair market value of the gift

or decoration at the time of its loss, theft, or at the time that it became unrecoverable as determined by GSA. If the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

### **Subpart D—Sale or Destruction of Foreign Gifts and Decorations**

#### **§102-42.135—Whose approval must be obtained before a foreign gift or decoration is offered for public sale?**

The Secretary of State or the Secretary's designee must approve any sale of foreign gifts or decorations (except sale of foreign gifts to the employee, that is approved in this part).

#### **§102-42.140—How is a sale of a foreign gift or decoration to an employee conducted?**

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the commercially appraised value of the gift. Sales must be conducted and documented in accordance with [part 102-38](#) of this subchapter B.

#### **§102-42.145—When is public sale of a foreign gift or decoration authorized?**

A public sale is authorized if a foreign gift or decoration:

(a) Survives Federal utilization screening;

(b) Is not purchased by the employee;

(c) Survives donation screening; and

(d) Is approved by the Secretary of State or designee.

#### **§102-42.150—What happens to proceeds from sales?**

The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

#### **§102-42.155—Can foreign gifts or decorations be destroyed?**

Yes, foreign gifts or decorations that are not sold under this part may be destroyed and disposed of as scrap or for their material content under [part 102-38](#) of this subchapter B.

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