

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.ID which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes a security zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–012 to read as follows:

§ 165.T08–012 Security Zone; Anacostia River, Washington, DC.

(a) *Location.* The following area is a security zone: All waters of the Anacostia River, from shoreline to shoreline, from a line connecting the following points, beginning at 38°51′50″

N, 077°00′41″ W thence to 38°51′44″ N, 077°00′26″ W, upstream to the Officer Kevin J. Welsh Memorial (11th Street) Bridge. These coordinates are based upon North American Datum 1983.

(b) *Regulations.* (1) Entry into the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone must depart the security zone.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State and local agencies.

(c) *Effective period.* This section is effective from 7:30 a.m. through 2 p.m. on April 17, 2008.

Dated: April 10, 2008.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 08–1146 Filed 4–15–08; 9:31 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–38

[FMR Amendment 2008–05; FMR Case 2007–102–2; Docket FMR–2008–0001; Sequence 2]

RIN 3090–AI33

Federal Management Regulation; FMR Case 2007–102–2, Sale of Personal Property—Federal Asset Sales (eFAS) Sales Centers

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by adding provisions for the sale of personal property through Federal Asset Sales (eFAS) Sales Centers.

DATES: *Effective Date:* This rule is effective on April 17, 2008.

Compliance Date: For agencies already tasked by the Office of Management and Budget (OMB) to meet

e-Government milestones related to this eFAS initiative, you must comply by April 17, 2008.

All other agencies must comply with the e-Government milestones identified in section 102–38.360 by July 17, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501–3828, or e-mail at robert.holcombe@gsa.gov for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FMR Amendment 2008–05, FMR Case 2007–102–2.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on April 3, 2007 (72 FR 15854) soliciting comments on proposed changes to 41 CFR part 102–38.

Nineteen individuals, agencies, or entities provided comments. Many of those providing comments had multiple statements, questions, or concerns. After reviewing the comments, and recognizing that the milestones listed in Subpart H were inconsistent with the eFAS e-Government milestones, that section is being revised to refer to the eFAS initiative milestones, which have been developed between the Office of Management and Budget, the eFAS Planning Office, and agency representatives over the past year. These milestones are available to the public via GSA’s Web site at <http://www.gsa.gov/govsalesmilestones>.

The second major change from the proposed rule is to address comments from the public that there is a perception that this e-Government initiative will make agencies choose less effective sales solutions in order to migrate to an approved Sales Center (SC). Section 102–38.360 is rewritten to further emphasize that agencies should identify sales solutions which are more effective than those solutions offered by approved Sales Centers by submitting a waiver to the eFAS Planning Office. GSA foresees granting temporary waivers for agencies to use these more effective solutions until either the sales solutions are approved as Sales Centers, or the agency migrates to an approved Sales Center as quickly as practicable. It is not the intent of the eFAS initiative nor this regulation to make agencies migrate away from effective sales solutions. The intent is to identify the best sales solutions for Federal assets, and to make these assets visible to the

public so that prospective purchasers can find and buy Federal assets for sale through one centralized Internet portal.

To clarify, the FMR has provisions for granting deviations to regulations; however, this regulation will allow for waivers outside the deviation process in FMR 102–2.60 through 102–2.110. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient.

This final rule recognizes different migration dates for agencies previously tasked to comply with OMB e-Government milestones related to this eFAS initiative and all other agencies. For agencies not tasked by OMB to meet e-Government milestones related to this eFAS initiative, the agencies' current sales solution(s) are considered approved eFAS Sales Center(s) until the "Compliance Date" of this final rule.

The following is a summary of comments on the proposed rule, and how they are addressed in this final rule.

Comment 1. One specific comment questioned the need to have "a duly authorized agency official" sell Federal personal property assets. Several other comments alluded to this sales function when comparing Federal and commercial sales.

Response: Federal asset sales policies have always required a Government representative approving each sale. This is to protect the Government's interest and because the transfer of title to personal property is an inherently governmental function. There are three main reasons for this requirement: The Federal official approving the sale is (a) obligating the Government to a course of action (committing the expenditure of resources) for every sale; (b) obligating the Government to the sales contract, including addressing sales disputes should issues arise, and the transfer of title to the personal property sold; and (c) verifying that the winning bidder(s) are not excluded from engaging in business with the Federal Government. Finally, most of these sales-related functions are within the realm of activities which are "inherently governmental" according to Office of Federal Procurement Policy (OFPP) Letter 92–1.

There was no change made to this final rule as a result of this comment.

Comment 2. Eleven comments specifically addressed the concern that the Government was competing with the private sector in the sale of Federal assets, and/or that the Government was impacting commercial sales or sales

solutions. Other comments alluded to this concern.

Response: As mentioned in *Comment 1.*, the sale of Federal assets cannot be compared to commercial sales in every aspect. In addition, under eFAS, private sector entities are the sales mechanism for many sales currently conducted by the eFAS-approved SCs. Finally, and perhaps most importantly, agencies that currently use or that are able to identify private sector entities which can demonstrate a more effective sales solution than the eFAS-approved SCs are invited and encouraged to submit a waiver request so that, if the waiver is approved, that agency and other agencies, in the future, may utilize the services of these private sector sales solutions and be better stewards of the Government's interests. GSA plans to approve waivers where there is a business case showing when an eFAS milestone is either impracticable or inefficient. The waiver process is discussed under *Comment 5*. For background: GSA is not able to identify all activities selling Federal personal property; therefore, GSA is not able to identify those sales activities which are more effective than the approved SCs. All agencies were asked to nominate effective sales solutions for consideration as SCs in 2005. This request for SC nominations was repeated in 2006. Only the eFAS-approved SCs were nominated by agencies as effective providers of sales solutions. No bid by an agency to become an SC using their current or proposed sales solution(s) was refused, regardless of whether the solution utilized private sector support, governmental support, or a mix of private and governmental activities. There was no change made in this final rule as a result of these comments.

Comment 3. Related to *Comment 2.*, there were two comments requesting that only private sector entities sell Federal assets.

Response: As in the response to *Comment 2.*, there is no barrier to private sector participation in the sales of Federal personal property. Many private sector entities already participate with the eFAS-approved SCs, and agencies are invited to identify new solutions which are more effective than those approved by the eFAS initiative. See the waiver process comments in *Comment 5*. There was no change made to this final rule as a result of these comments.

Comment 4. Nine comments expressed concern that this final rule will increase the cost of Government sales; either because the SCs will charge higher prices because they are not as

cost-effective as private sector sellers, or because they are not incentivized to maximize profits.

Response: Many private sector entities already participate with the eFAS-approved SCs, and agencies are invited to identify new solutions which are more effective than those approved by the eFAS initiative. See the waiver process comments in *Comment 5*. There was no change made to the final rule as a result of these comments.

Comment 5. Six comments related to the FMR deviation or waiver process, either suggesting that Federal agencies be able to opt out of the provisions of this final rule or stating that the process of obtaining a waiver to the provisions of this final rule was not provided.

Response: The eFAS initiative is established to utilize and leverage the services of the best sellers of Federal assets. It would be contrary to the eFAS initiative to allow agencies to choose sales solutions that are less effective sellers than those identified by the selling agencies or the eFAS Executive Steering Committee (ESC). The general provisions for requesting a deviation to the regulation remain in section 102–38.30. However, for waivers to the eFAS milestones (such as migrating to an ESC-approved SC), the agency must request a waiver in accordance with section 102–38.360. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient.

In summary, for this final rule, there is a waiver process for the eFAS milestones (following policy in section 102–38.360) and a deviation process to the regulation that is for other than eFAS milestones (following policy in section 102–38.30). Section 102–38.360 was modified to address eFAS Planning Office waivers to the eFAS milestones.

Comment 6. Two comments suggested that the process for an agency to become an eFAS-approved SC was not identified.

Response: The process for an agency to become an eFAS-approved SC is identified in section 102–38.35 under the definition of a "Sales Center." There was no change made to the final rule as a result of these comments.

Comment 7. One comment suggested that all new SCs be approved by the Office of Management and Budget (OMB).

Response: OMB has approved all SCs and will approve the designation of any future SCs. There was no change made to this final rule as a result of this comment.

Comment 8. One comment suggested that all SCs sit on a board which

governs the eFAS process, and each SC have an equal vote.

Response: All agencies identified as Business Reference Model agencies by OMB are invited to participate in the eFAS ESC. The voting members were identified by OMB at the beginning of the eFAS initiative and include SC agencies and non-SC agencies. The input of the non-SC agencies is important to obtain the perspective of the customer agencies. There was no change made to this final rule as a result of this comment.

Comment 9. Three responses contend that the proposed rule is in violation of Executive Order 12866 as it will harm many small businesses.

Response: Executive Order 12866 specifically excludes a regulation limited to rules governing agency management practices (such as this) from the definition of a significant regulatory action (section 3(d)). There was no change made to this final rule as a result of these comments.

Comment 10. One question asked if GSA will be the only seller of surplus property held by the State Agencies for Surplus Property (SASPs) which is not donated.

Response: As the undonated property held by the SASPs is still Federal property, it would fall under the rules of this final rule and must be sold through an SC such as GSA, if not disposed of in accordance with FMR 102–37.305. There was no change made to this final rule as a result of this comment.

Comment 11. Two comments had a concern that the Government is inappropriately using private sector business models or will violate patent laws by using Government developed systems.

Response: The Government must ensure that it does not violate protected processes or tools. There was no change made to this final rule as a result of these comments.

Comment 12. One comment had a concern that the Government will have to invest in the development of an SC.

Response: The SCs were nominated, approved, and selected because they have already shown expertise in selling Federal assets and have a plan to be able to absorb an increase in sales volume if more assets are sold through the SC. This increase in SC capacity will not be funded by the Government. There was no change made to this final rule as a result of this comment.

Comment 13. One comment expressed a concern that only GSA determines who sells property under the eFAS initiative.

Response: As indicated under *Comment 7.*, OMB makes the final decision as to which agencies become SCs, and therefore who sells Federal property. Prior to OMB review, the eFAS ESC reviews and approves the recommendations of the ESC selection panel. GSA has only one vote on the eFAS ESC. There was no change made to this final rule as a result of this comment.

Comment 14. One comment had a concern that the eFAS activity is not transparent and in accordance with principles of the Federal Acquisition Regulation.

Response: This is not an acquisition for sales services—the eFAS initiative involves the selection of agencies to sell property belonging to the holding agency (and possibly that of other agencies). Nevertheless, the process of approving and selecting SCs and making significant decisions is transparent to the representatives on the eFAS ESC, and those who represent the interests of all the agencies selling assets. Finally, major decisions are fully explained and documented to OMB. There was no change made to this final rule as a result of this comment.

Comment 15. Two comments had a concern that this would violate OMB Circular A–76 as the Circular states that a competition should be performed before Government personnel perform an activity performed by the private sector.

Response: As explained under *Comment 1.*, these functions are clearly within the scope of activities which are “inherently governmental” according to OFPP Letter 92–1, and, as such, do not need to be competed with commercial activities. There was no change made to this final rule as a result of these comments.

Comment 16. One comment suggested that the proposed rule violates 40 U.S.C. 573 in that “the statute does not permit GSA to retain charges for running a Web site or collecting information not part of the sales process.”

Response: Administering the GovSales sales Web site is a cost associated with sales of property which GSA is allowed to do under 40 U.S.C. 573. The retention of proceeds cited in the proposed FMR 102–38.295(a) is what all agencies (not just GSA) can retain to mitigate costs in accordance with 40 U.S.C. 571. There was no change made to this final rule as a result of this comment.

Comment 17. One comment observed that the vendor has attempted to update pricing with GSA for years with no progress.

Response: GSA’s contract pricing was not addressed in the proposed rule, and is not addressed in the final rule. The comment likely refers to a vendor’s pricing on the GSA schedules. The rates charged by any eFAS SC to sell assets for another agency is established by an agreement between the eFAS SC and the holding agency. There was no change made to this final rule as a result of this comment.

Comment 18. One comment asked “How will sales work for a private citizen that does not have access to the internet?”

Response: In addition to online sales, there will continue to be offline sales. Also, with the continuing spread of technology, more people will have access to the Internet through their community, work, or friends/family. There was no change made to this final rule as a result of this comment.

Comment 19. One comment expressed the expectation that GSA will keep costs to the absolute minimum since agencies no longer have approved SC options.

Response: GSA agrees with this comment. The eFAS initiative and GSA will continually seek to find ways to ensure that GSA rates (as well as the rates charged by all eFAS SCs) are competitive. Also, agencies that find a sales process that provides a better value should make that known to the eFAS Planning Office. There was no change made to this final rule as a result of this comment.

Comment 20. One comment suggested that Real Property sales should be left to local brokers.

Response: The proposed rule and this final rule only address sales of Federal personal property. There was no change made to this final rule as a result of this comment.

Comment 21. One question asked if this final rule would increase the amount of property returned by an SC to the agency because the property could not be sold or the sale was not conducted because it was not feasible.

Response: The eFAS initiative does not foresee any degradation of SC service as a result of this final rule. To the contrary, through agencies identifying and using more effective sales solutions, the initiative expects that service and effectiveness will improve over time. There was no change made to this final rule as a result of this comment.

The following comments were accepted and are incorporated in this final rule.

Comment 22. One comment was that the policy should be clearer regarding what agencies should do with property that is scrap, or property that the SCs

could not sell, or that was otherwise eligible for disposal under the abandonment/destruction authorities of section 102–36.305 and following subparts.

Response: Agreed. Provisions have been added to this final rule to address these situations (sections 102–38.365 and 102–38.370).

Comment 23. Three comments observed that this final rule could not supersede their agency's authority given to them by another law.

Response: Agreed. It will be clear in section 102–38.20 that agencies with sales authorities outside title 40 of the United States Code are exempt from following this final rule.

B. Executive Order 12866

The General Services Administration (GSA) has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

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

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 102–38

Government property management, Surplus Government property.

Dated: January 10, 2008.

Lurita Doan,

Administrator of General Services.

Editorial Note: This document was received at the Office of the Federal Register on April 14, 2008.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–38 as set forth below:

PART 102–38—SALE OF PERSONAL PROPERTY

■ 1. The authority citation for part 102–38 continues to read as follows:

Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

■ 2. Revise § 102–38.20 to read as follows:

§ 102–38.20 Must an executive agency follow the regulations of this part when selling all personal property?

Generally, yes, an executive agency must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions;

(d) Foreign excess personal property is exempt from these provisions; and

(e) Agency sales procedures which are mandated or authorized under laws other than Title 40 United States Code are exempt from this part.

§ 102–38.25 [Amended]

■ 3. Amend § 102–38.25 by removing the words “holding agency” and adding the words “Sales Center” in its place.

■ 4. Revise § 102–38.30 to read as follows:

§ 102–38.30 How does an executive agency request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part. However, waivers which are distinct from the standard deviation process and specific to the requirements of the Federal Asset Sales (eFAS) initiative milestones (see Subpart H of this part) are addressed in § 102–38.360.

■ 5. Amend § 102–38.35 by alphabetically adding the definitions “Federal Asset Sales (eFAS)”, “Federal Asset Sales Planning Office (eFAS Planning Office)”, “Holding Agency”, “Migration Plan”, and “Sales Center (SC)” to read as follows:

§ 102–38.35 What definitions apply to this part?

* * * * *

Federal Asset Sales (eFAS) refers to the e-Government initiative to improve the way the Federal Government

manages and sells its real and personal property assets. Under this initiative, only an agency designated as a Sales Center (SC) may sell Federal property, unless a waiver has been granted by the eFAS Planning Office in accordance with § 102–38.360. The eFAS initiative is governed and given direction by the eFAS Executive Steering Committee (ESC), with GSA as the managing partner agency.

Federal Asset Sales Planning Office (eFAS Planning Office) refers to the office within GSA assigned responsibility for managing the eFAS initiative.

Holding Agency refers to the agency in possession of personal property eligible for sale under this part.

* * * * *

Migration Plan refers to the document a holding agency prepares to summarize its choice of SC(s) and its plan for migrating agency sales to the SC(s). The format for this document is determined by the eFAS ESC.

* * * * *

Sales Center (SC) means an agency that has been nominated, designated, and approved by the eFAS ESC and the Office of Management and Budget (OMB) as an official sales solution for Federal property. The criteria for becoming an SC, the selection process, and the ongoing SC requirements for posting property for sale to the eFAS portal and reporting sales activity and performance data are established by the eFAS ESC and can be obtained from the eFAS Planning Office at GSA. The eFAS Planning Office may be contacted via e-mail at FASPlanningOffice@gsa.gov. SCs may utilize (and should consider) private sector entities as well as Government activities and are expected to provide exemplary asset management solutions in one or more of the following areas: on-line sales; off-line sales; and sales-related value added services. SCs will enter into agreements with holding agencies to sell property belonging to these holding agencies. A holding agency may employ the services of multiple SCs to maximize efficiencies.

* * * * *

■ 6. Revise § 102–38.40 to read as follows:

§ 102–38.40 Who may sell personal property?

An executive agency may sell personal property (including on behalf of another agency when so requested) only if it is a designated Sales Center (SC), or if the agency has received a waiver from the eFAS Planning Office. An SC may engage contractor support to

sell personal property. Only a duly authorized agency official may execute the sale award documents and bind the United States.

- 7. Amend § 102–38.45 by revising the heading and introductory paragraph to read as follows:

§ 102–38.45 What are an executive agency’s responsibilities in selling personal property?

An executive agency’s responsibilities in selling personal property are to—

* * * * *

- 8. Amend § 102–38.50 by revising the heading and introductory paragraph to read as follows:

§ 102–38.50 What must we do when an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If an executive agency suspects violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, the agency must—

* * * * *

- 9. Revise § 102–38.60 to read as follows:

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

The holding agency is responsible for the care and handling costs of the personal property until it is removed by the buyer, the buyer’s designee, or an SC. The holding agency may request the SC to perform care and handling services in accordance with their agreement. When specified in the terms and conditions of sale, the SC may charge the buyer costs for storage when the buyer is delinquent in removing the property. The amount so charged may only be retained by the holding agency performing the care and handling in accordance with § 102–38.295.

§ 102–38.65 [Amended]

- 10. Amend § 102–38.65 in the heading, by removing the words “we are” and adding the words “we are or the holding agency is” in its place; and in the second sentence by adding the words “or the holding agency” after the word “you”.

§ 102–38.70 [Amended]

- 11. Amend § 102–38.70 in the heading, by removing the word “we” and adding the words “the holding agency” in its place; and in paragraph (a), by removing the word “you” and adding the words “the holding agency” in its place.

- 12. Amend § 102–38.75 by revising the introductory text to paragraph (a), and paragraph (a)(12) to read as follows:

§ 102–38.75 How may we sell personal property?

(a) You will sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote the fairness, openness, and timeliness necessary for the sale to be conducted in a manner most advantageous to the Government. When you are selling property on behalf of another agency, you must consult with the holding agency to determine any special or unique sales terms and conditions. You must also document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

* * * * *

(12) Requirements to comply with applicable laws and regulations. 41 CFR Part 101–42 contains useful guidance addressing many of these requirements. You should also contact your agency’s Office of General Counsel or environmental office to identify applicable Federal, State, or local environmental laws and regulations.

* * * * *

- 13. Revise § 102–38.120 to read as follows:

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may conduct negotiated sales of personal property at fixed prices (fixed price sale) under this section when:

- (a) The items are authorized to be sold at fixed price by the Administrator of General Services, as reflected in GSA Bulletin FMR B–10 (located at <http://www.gsa.gov/fmrbulletin>). You may also contact the GSA Office of Travel, Transportation, and Asset Management (MT) at the address listed in § 102–38.115 to determine which items are on this list of authorized items;
- (b) The head of your agency, or designee, determines in writing that such sales serve the best interest of the Government. When you are selling property on behalf of a holding agency, you must consult with the holding agency in determining whether a fixed price sale meets this criterion; and
- (c) You must publicize such sales to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You or the holding agency may also establish additional terms and conditions that

must be met by the successful purchaser in accordance with § 102–38.75.

- 14. Revise § 102–38.295 to read as follows:

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds, in accordance with your agreement with the holding agency, equal to your direct costs and reasonably related indirect costs (including your share of the Governmentwide costs to support the eFAS Internet portal and Governmentwide reporting requirements) incurred in selling personal property.

(b) A holding agency may retain that portion of the sales proceeds equal to its costs of care and handling directly related to the sale of personal property by the SC (e.g., shipment to the SC, storage pending sale, and inspection by prospective buyers).

(c) After accounting for amounts retained under paragraphs (a) and (b) of this section, as applicable, a holding agency may retain the balance of proceeds from the sale of its agency’s personal property when—

- (1) It has the statutory authority to retain all proceeds from sales of personal property;
- (2) The property sold was acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;
- (3) The property sold was surplus Government property that was in the custody of a contractor or subcontractor, and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;
- (4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or
- (5) The property sold was related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

(4) The property was sold to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) The property sold was related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

- 15. Amend § 102–38.300 by revising the section heading to read as follows:

§ 102–38.300 What happens to sales proceeds that neither we nor the holding agency are authorized to retain, or that are unused?

* * * * *

- 16. Add Subpart H, consisting of §§ 102–38.360, 102–38.365, and 102–38.370 to read as follows:

Subpart H—Implementation of the Federal Asset Sales Program

§ 102–38.360 What must an executive agency do to implement the eFAS program?

(a) An executive agency must review the effectiveness of all sales solutions, and compare them to the effectiveness (e.g., cost, level of service, and value added services) of the eFAS SCs. Agencies should give full consideration to sales solutions utilizing private sector entities, including small businesses, that are more effective than the solutions provided by any eFAS-approved SC. If the agency decides that there are more effective sales solutions than those solutions offered by the eFAS SCs, the agency must request a waiver from the milestones using the procedures and forms provided by the eFAS Planning Office. Waivers will be approved by the eFAS Planning Office upon presentation of a business case showing that complying with an eFAS milestone is either impracticable or inefficient. Waiver approval will be coordinated with GSA's Office of Travel, Transportation, and Asset Management. Contact the eFAS Planning Office at FASPlanningOffice@gsa.gov to obtain these procedures and forms.

(b) An approved waiver for meeting one of the eFAS milestones does not automatically waive all milestone requirements. For example, if an agency receives a waiver to the migration milestone, the agency must still (1) post asset information on the eFAS Web site and (2) provide post-sales data to the eFAS Planning Office in accordance with the content and format requirements developed by the eFAS ESC, unless waivers to these milestones are also requested and approved. Waivers to the eFAS milestones will not be permanent. Upon expiration of the waiver to the migration milestone, an agency must either migrate to an approved SC, or serve as a fully functioning SC, as soon as practicable. See the definition of a "Sales Center" at § 102–38.35 for an overview of how agency sales solutions become SCs.

(c) An agency which receives a waiver from the eFAS milestones must comply with subparts A through G of this part as if it were an SC.

(d) An executive agency must comply with all eFAS milestones approved by OMB including those regarding the completion of an agency-wide sales migration plan, the reporting of pre- and post-sales data, and the migration to approved SCs unless a waiver has been submitted by the agency and approved by the eFAS Planning Office. The eFAS milestones are available for viewing at <http://www.gsa.gov/govsalesmilestones>.

§ 102–38.365 Is a holding agency required to report property in "scrap" condition to its selected SC?

No. Property which has no value except for its basic material content (scrap material) may be disposed of by the holding agency by sale or as otherwise provided in § 102–38.70. However, the holding agency should consult the SC(s) selected by the holding agency as to the feasibility of selling the scrap material. Agencies selling scrap property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

§ 102–38.370 What does a holding agency do with property which cannot be sold by its SC?

All reasonable efforts must be afforded the SC to sell the property. If the property remains unsold after the time frame agreed to between the SC and the holding agency, the holding agency may dispose of the property by sale or as otherwise provided in § 102–38.70. The lack of public interest in buying the property is evidence that the sales proceeds would be minimal. Agencies selling property under authority of this subpart are still required to report sales metrics in accordance with eFAS ESC-approved format and content.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4133–CN]

RIN 0938–AP25

Medicare Program; Modification to the Weighting Methodology Used To Calculate the Low-Income Benchmark Amount; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final.

SUMMARY: This document corrects mathematical errors that appeared in the impact analysis accompanying the final rule that appeared in the **Federal Register** on April 3, 2008 entitled, "Modification to the Weighting Methodology Used to Calculate the Low-Income Benchmark Amount."

DATES: *Effective Date:* May 31, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Spitalnic, (410) 786–2328.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc.08–1088 of April 3, 2008 (73 FR 18176), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document printed in the **Federal Register** on April 3, 2008. Accordingly, the corrections are effective May 31, 2008.

II. Summary of Errors

This correction notice corrects the impact estimates shown in the preamble to the final rule, Medicare Program; Modification to the Weighting Methodology Used to Calculate the Low-Income Benchmark Amount (CMS–4133–F), which appeared in the **Federal Register** on April 3, 2008. That final rule introduced an improved weighting method in the calculation of the low-income benchmark premium amount under section 1860D–14(b)(2)(A)(ii) of the Social Security Act.

The impact estimates presented in the final rule were affected by a mathematical calculation error that resulted in an overestimate of the number of Medicare Part D enrollees affected by the final rule and a similar overestimate of the additional cost to Medicare under the new policy. This notice corrects the estimated reduction in the future number of low-income subsidy eligible beneficiaries who would have to be reassigned to a different Part D prescription drug benefit plan. The original estimate was 850,000, and the corrected number is 580,000. Further, the additional cost of the rule was originally estimated to total \$1.68 billion for fiscal years 2009 through 2018, and the corrected estimated cost is \$1.23 billion. The correction of these estimation errors has no effect on the policy adopted in the final rule, on the Part D low-income subsidy benchmarks previously determined for 2008, or on beneficiaries' enrollment in Part D plans in 2008.

III. Correction of Errors

In FR Doc. 08–1088 of April 3, 2008 (73 FR 18176), make the following corrections:

1. On page 18178, in the second column, in the first full paragraph, in line 27, change the number "850,000" to "580,000."

2. On pages 18180 through 18182, section "V. Regulatory Impact