

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		<b>Number:</b> 5200-3
<b>SUBJECT:</b>  Gift Acceptance Policy	<b>DATE:</b> April 18, 2003	
	<b>OPI: Office of Procurement and Property Management</b>	

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**1 PURPOSE**

This regulation sets forth general policies and procedures for acceptance and solicitation of gifts of personal, real, and intellectual property. It does not apply to gifts of travel and subsistence accepted under 31 U.S.C. 1353 (see the Federal Travel Regulation, 41 CFR Chapter 304) or gifts of voluntary services (see DR 4230-1, Voluntary Programs).

**2 SPECIAL INSTRUCTIONS**

This regulation removes the gift acceptance policy from the Agriculture Property Management Regulations (AGPMR), section 104-43.307-5 for personal property and section 104-18.5001(c) for real property.

Questions of an ethical nature should be referred to the Office of Ethics (OE). Questions of a legal nature should be referred to the Office of the General Counsel.

### 3 DEFINITIONS

- a Activities regulated by the Department of Agriculture (USDA) means activities regulated under programs within the Food Safety and Marketing and Regulatory Programs mission areas of the Department.
- b Agency means an organizational unit of the Department, other than a staff office as defined in Section 3n, the head of which reports to an Under or Assistant Secretary.
- c Bequest means a gift (usually of personal property) made by a will.
- d Conditional gift means a gift the acceptance of which is conditioned on adherence by the recipient to specific terms for use and disposition of the gift that are set by the donor.
- e Gift means property, whether personal or real, voluntarily transferred to the government without compensation or consideration, or for substantially less than market value, for the benefit of the Department or for the carrying out of any of its functions. For purposes of this Departmental Regulation (DR), the term “gift” includes a bequest or devise, unless otherwise specifically noted.
- f Devise means a gift (usually of real property) made by a will.
- g Intangible Property means a right or possession of a nonphysical or abstract nature that has value, such as a copyright, patent, license, trademark, or goodwill of a business. It also refers to a financial asset having no intrinsic value but representing value, such as securities, notes, accounts receivable, etc.
- h Intellectual Property means a category of intangible rights protecting commercially valuable products of the human intellect, including patents, trademarks, and copyrights.
- i Money means cash or currency.
- j Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, director, trustee, general partner, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

- k Personal property means property other than real property, and includes intellectual property, intangible property, and money.
- l Property means any external thing over which the rights of possession, use, and enjoyment are exercised which can be either real or personal property.
- m Real property means any land or interests in land, including the improvements, structures, and fixtures located thereon.
- n Solicitation means a request made by an employee, made through personal contact or through the use of one's name or official position in correspondence, or a request made through another employee or person either at the requesting employee's behest or under the requesting employee's authority, that is intended to encourage the voluntary offer or tender by any person or persons of any form of gift. It includes the solicitation of property through the media, oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence.
- o Staff office means a Departmental administrative office the head of which reports to any official within the Office of the Secretary (OSEC).
- p Unconditional gift means a gift for which the donor has established no specific terms for use or disposition by the recipient

#### 4 POLICY

Acceptance and solicitation of gifts of property by USDA staff offices and agencies under statutory gift acceptance authorities possessed by the Secretary, the Department, or agencies of the Department, shall be accomplished in accordance with the provisions of this regulation.

#### 5 RESPONSIBILITIES

##### a General Applicability.

This section generally delegates responsibilities for the acceptance of gifts under statutory gift authorities enjoyed by the Department, except as otherwise provided for by law or under Section 6.

##### b Unconditional Gifts of Personal Property.

Agency Heads or their designated representative(s) are authorized to accept, in the name of the Department, unconditional gifts of personal property.

##### c Conditional Gifts of Personal Property.

Only the Chief Financial Officer or his or her designated representative(s) may accept conditional gifts of personal property.

d Conditional or Unconditional Gifts of Intellectual Property.

Except for the Office of Inspector General (OIG), in the case of conditional or unconditional gifts of intellectual property accepted under Sections 5b or 5c, concurrence of the OGC is required.

e Conditional or Unconditional Gifts of Real Property.

(1) For those agencies authorized by statute to own land, the approval of the Assistant Secretary for Administration, or his or her designated representative(s), is required prior to commencing any action leading to the acceptance of a gift of real property when the total estimated fair market value of the land is \$50,000 or more, or the land has a building with an estimated value of \$500,000 or more (including fixtures). Agency Heads approve gifts when the total estimated fair market value is less than the listed thresholds.

(2) Gifts of real property to the Forest Service (FS) or the Natural Resources and Conservation Service (NRCS), for or in connection with natural resource programs, shall be accepted in accordance with procedures established in the FS Manual or the NRCS General Manual, respectively, subject to the requirements of Sections 6, 7, 8 and 9.

## 6 PROHIBITED GIFTS

a USDA-wide prohibition.

Except as provided in Section 6c, no gift shall be accepted (to include the right to direct the offering or donation of property to a third party authorized by law to accept such gifts on behalf of a Federal agency) by USDA, or by any of its staff offices or agencies, from the following sources:

(1) Any person who conducts activities regulated by USDA, or any of its staff offices or agencies;

(2) Any organization where either:

(a) A majority of its members are persons who conduct activities regulated by USDA, or any of its staff offices or agencies; or

(b) A majority of its funding is provided by persons who conduct activities regulated by USDA, or any of its staff offices or agencies (see Appendix A,

Example 1);

- (3) Any person or organization engaged in criminal, civil, or administrative litigation with USDA, with any staff office or agency of USDA, or with the United States of America, based on issues relating to the programs or operations of USDA, or any of its staff offices or agencies; or
- (4) Any person whose ability to participate in USDA programs, including loans, grants, contracts, etc., has been suspended or terminated for cause by USDA, or any of its staff offices or agencies.

b Additional staff office or agency prohibition.

- (1) If not prohibited under Section 6a, a gift generally may be accepted by a staff office or USDA agency unless the gift is from any person who is engaged with the staff office or agency, or the Department mission area of which the agency is a part, as a contractor or contract bidder, borrower, grantee, cooperator, lessee, permittee, or other program participant, or who is an applicant for a loan, grant, lease, or other program participation from the agency or staff office (see Appendix A, Examples 2, 3, and 4).
- (2) The prohibition in the above Section 6b(1) also applies to any organization where either:
  - (a) A majority of its members are persons covered by the prohibition in Section 6b(1); or
  - (b) A majority of its funding is provided by persons covered by the prohibition in Section 6b(1) (see Appendix A, Example 5).
- (3) A gift that is prohibited under Section 6b(1) may be accepted under an exception in 6c below.

c Exceptions.

- (1) Gifts from the sources identified in Sections 6a and 6b may be accepted if :
  - (a) The gift is an item of a commemorative nature from other than a for-profit entity if it is intended that the item be used or displayed in an office setting;
  - (b) The gift is from a State, local, tribal, or foreign government incidental to cooperation in carrying out a Federal program;
  - (c) The gift is authorized by the express purpose of a statutory gift acceptance authority; or

- (d) Acceptance of the gift is in the public interest because the benefits relating to the acceptance or rejection of the gift substantially outweigh the appearance of loss of impartiality on the part of USDA in its dealings with the donor.
- (2) Gifts accepted under the exceptions in Section 6c(1) shall be accepted only as follows:
- (a) Any general officer, Under Secretary, or Assistant Secretary, or designee of such official at the deputy level, or Agency Head (upon prior notice to the Under or Assistant Secretary to which the Agency Head reports), may accept a gift to their staff office or mission area under Sections 6c(1) (a) - (c) in an amount, or of a value, in excess of \$1,000,000, after consultation with OGC. For gifts in an amount, or of a value, of \$1,000,000 or less, general officers, Under Secretaries, Assistant Secretaries, and Agency Heads may delegate this authority to accept gifts to appropriate subordinate officials at lesser dollar thresholds as agency needs and prudence allow. An appraisal is not required to establish the value of the gift for the purpose of acceptance under this Section.
  - (b) Only the Secretary and the Deputy Secretary, or any general officer, Under Secretary, Assistant Secretary, or Agency Head with respect to a gift to their staff office or mission area, may accept a gift under Section 6c(1)(d), after consultation with the OGC.

## 7 SOLICITATION OF GIFTS

- a Agencies may solicit gifts for acceptance by the agency under this regulation unless prohibited by law or section 7b.
- b Agencies shall not solicit gifts that are prohibited under Section 6, even if the gift would fall within an exception under Section 6.
- c Agencies may not solicit gifts in the following manner:
  - (1) Through the use of direct mail appeals for contribution of money;
  - (2) Through the direct conduct of fundraising events;
  - (3) Through the hiring of development officers and staff; or
  - (4) Through the conduct of any game of chance.

## 8 PRUDENTIAL CONSIDERATIONS

In accepting gifts under the exceptions in Section 6c, officials shall ensure that multiple gifts from one source, or multiple or duplicate gifts from sources with identical interests, are not being made in order to affect the impartiality of USDA. Officials also should not solicit or accept multiple or duplicate gifts under this DR to create a substitute funding stream for routine operational expenses in lieu of appropriations. To these ends, officials should not accept multiple or duplicate gifts of office equipment, software and hardware, furniture, or office supplies.

## 9 GIFT ACCEPTANCE DOCUMENTATION AND PROCEDURES

- a Each gift (except for a bequest or devise) must be documented with a gift acceptance letter that is executed by the appropriate authorized Department official and communicated to the donor. The acceptance letter should state that such gifts shall in no way imply an endorsement of the gift or the giver, nor impose any obligation on the part of the recipient to provide anything to the donor, including data or information. The acceptance letter should not provide any estimated value of the gift, nor should agency officials otherwise provide the donor with an estimated value. Proper valuation of the gift for tax purposes is the responsibility of the donor.
- b Gifts of real property to the FS or NRCS shall be accepted only if they meet the requirements of the FS Manual or the NRCS General Manual, respectively. Gifts of real property to any other agency or staff office shall be accepted only if they meet the requirements for the acquisition of real property set forth in subpart 104-18.50 of the AGPMR.
- c For record-keeping purposes, agencies and staff offices, through their property units, shall identify gifts of personal property for future reference in the manner required by the AGPMR, and shall note any conditions attached to use or disposition of the gift.
- d Nothing in this DR shall affect the requirement that agencies or staff offices must secure title clearance for real property from OGC prior to acceptance.

## 10 REJECTION OF A BEQUEST OR DEVISE

If an agency chooses to reject a bequest or devise, the agency shall communicate such rejection in writing to the executor or administrator of the estate.

## 11 REPORTING OF GIFTS

- a Agencies shall file an annual report on all gifts having a value of \$5,000 or more

accepted during each calendar year. The report shall be filed, no later than January 31 of the ensuing calendar year, with the Office of Procurement and Property Management (OPPM), Departmental Administration, with a copy provided to the OE, Departmental Administration. The report shall include the following information:

Date gift accepted;  
Full name, address, and telephone number of the donor;  
Name of accepting agency;  
Name of accepting official;  
Name and description of the gift, including gift type: real property (R), personal property (P), money (M), intellectual property (I);  
Estimated value of gift and basis of estimate (an appraisal is not required); and  
Provision of DR under which gift was accepted, and if a prohibited gift, the exception used to accept and basis for exception.

- b An alternative to the annual reporting requirement, would be for agencies to submit a copy of each gift acceptance letter to both OPPM and OE. Under this option, agencies shall submit an annual certification that copies of each gift acceptance letter have been submitted. This certification is due no later than January 31.

## 12 DISPOSITION OF GIFTS

- a Accounting for Funds.

Any gift of money, or the net proceeds from the liquidation of any gift of property not used for its restoration, shall be deposited in the Treasury of the United States for credit into a receiving agency account. The Treasury Account Symbol for monetary gifts or gift proceeds is 12x8203 to be followed by agency codes (i.e., 03 for Agricultural Research Service (ARS), 11 for FS, etc.) and a 3-digit accounting classification code. Each agency or staff office must establish an accounting classification code to be used for obligation of expenditures against the funds. Agencies and staff offices that have established such codes are the OSEC, ARS, and the Foreign Agriculture Service (FAS) (995), FS (939), the National Agriculture Library (NAL) (996) and the Food Safety and Inspection Service (FSIS) (974). Agencies or staff offices without accounts need to contact the National Finance Center, Accounting Control Branch to establish their codes.

- b Disposition.

A gift of real or personal property no longer required for official use or for the purpose for which it was given shall be disposed of in accordance with the statutory authority under which the gift was accepted or, if a conditional gift, in accordance with the terms or any conditions placed on disposition of the property. If neither the statutory authority nor conditions attached to the gift specify any

terms for disposition, the property shall be disposed of in accordance with the property disposition provisions of the AGPMR, or, in the case of real property donated to the FS or NRCS, the FS Manual or NRCS General Manual, respectively.

-END-

## APPENDIX A

### Examples

#### EXAMPLE 1

A national association of fish processors wishes to make a donation to ARS for research regarding the use of byproducts generated by fish processing as fertilizer. Fish processing is not an activity regulated by USDA. However, due to industry consolidation the majority of funding of the association is provided by members of the meatpacking industry who do conduct activities regulated by FSIS. Accordingly, acceptance of the gift is not permissible.

#### EXAMPLE 2

The FS has contracted with Acme Construction Co. to build a road in Alaska. Acme Construction Co. wants to donate construction material to NRCS in Idaho and \$10,000 to the National Arboretum in Washington, D.C. Acceptance of the gift to NRCS would not be permissible because it is in the Natural Resources and Environment mission area of the Department along with the FS, for which Acme is a contractor. The gift to the National Arboretum may be accepted because it is an ARS facility within the Research, Education, and Economics mission area of the Department.

#### EXAMPLE 3

A Western land-grant university wishes to make a gift of cattle to ARS for research. The cattle are grazed on a National Forest under a permit from the FS, which is in the Natural Resources and Environment mission area. ARS is in the Research, Education, and Economics (REE) mission area. Additionally, the land-grant university receives grant funds from CSREES, which also is in the Research, Education, and Economics mission area. Acceptance of the gift would not be permissible. While the fact that the university has a permit with the FS does not bar acceptance of the gift, ARS could not accept a gift offered by a REE mission area grantee.

#### EXAMPLE 4

A national supermarket chain is involved in litigation with the Department over mishandling of food stamps. The chain wishes to make a gift to ARS to support human nutrition research and a gift to FNS to support a child nutrition information campaign. Neither gift may be accepted.

Since the supermarket chain is a retailer that accepts food stamps, and thus is an FNS program participant, acceptance of the gift is not permissible. The gift to ARS, an agency outside of the Food and Nutrition mission area, would otherwise be permissible but for that fact that the chain is involved in litigation with USDA and thus acceptance of the gift is not permissible under 5a(3).

#### EXAMPLE 5

A national conservation association wishes to make a gift of fire protection equipment to the Boise National Forest. It has no relationship to either the FS or NRCS. The national association receives 75% of its funding from companies that harvest timber from FS land. The gift may not be accepted.

#### *CONFORMING ACTIONS REQUIRED TO IMPLEMENT PROPOSED DEPARTMENTAL REGULATION ON ACCEPTANCE OF GIFTS*

1. Remove section 104-18.5001(c) from the AGPMR.
2. Revise section 104-18.5003 as necessary to conform to section 4e of the proposed DR.
3. Delete section 104-43.307-5 from the AGPMR