

or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) **Enforcement.** (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

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BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102-35

[FMR Case 2004-102-1]

RIN 3090-AH93

Federal Management Regulation; Disposition of Personal Property

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

ACTION: Proposed rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) by revising coverage on personal property and moving it into Subchapter B of the FMR. This proposed rule adds a new part to Subchapter B of the FMR to provide an overview of the property disposal regulation and provide definitions for terms found in the FMR parts as well as the Federal Property Management Regulations (FPMR) parts. The FPMR parts will be included in the FMR in the near future. The FMR and any corresponding documents may be accessed at GSA's Web site at <http://www.gsa.gov/fmr>.

DATES: Interested parties should submit comments in writing on or before October 12, 2006 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FMR case 2004-102-1 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Agency Web Site: <http://www.gsa.gov/fmr>. Click on FMR Proposed Rules, and the FMR case number to submit comments.

- E-mail: fmrcase.2004-102-1@gsa.gov. Include FMR case 2004-102-1 in the subject line of the message.

- Fax: 202-501-4067.

- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FMR case 2004-102-1 in all correspondence related to this case. All comments received will be posted without change to <http://www.gsa.gov/fmr>, including any personal information provided. Click on "FMR Public Comments".

FOR FURTHER INFORMATION CONTACT The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Robert Holcombe, Office of Governmentwide Policy, Personal Property Management Policy, at (202) 501-3828, or e-mail at robert.holcombe@gsa.gov. Please cite FMR case 2004-102-1.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule adds a new part, 102-35, to Subchapter B of the FMR to provide an overview of the property disposal regulation and to provide definitions for terms found in FMR parts 102-36 through 102-42 (41 CFR 102-36 through 102-42), as well as FPMR parts 101-42 and 101-48 (41 CFR 101-42 and 101-48) which will be included in the FMR in the near future. This part serves as a summary and overview of the policies relating to the disposal of Federal personal property and provides overall guidance for all methods of property disposal.

Finally, this part emphasizes the use of excess property from other agencies as the first source of supply, and specifically identifying the preference to transfer property to Federal agencies for their own use before transferring that property to agencies for use by non-Federal entities.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 41 CFR Part 102–35

Government employees, Personal property.

Dated: January 18, 2006.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapter 102 as follows:

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

1. Part 102–35 is added to subchapter B of chapter 102 to read as follows:

PART 102–35—DISPOSITION OF PERSONAL PROPERTY

Sec.

102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

102–35.10 How are these regulations for the disposal of personal property organized?

102–35.15 What are the goals of GSA's personal property regulations?

102–35.20 What definitions apply to GSA's personal property regulations?

102–35.25 What management reports must we provide?

102–35.30 What actions must I take regardless of the property disposition method?

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

§ 102–35.5 What is the scope of the General Services Administration's regulations on the disposal of personal property?

The General Services Administration's personal property disposal regulations contained in this part and parts 102–36 through 102–42 of this subchapter B as well as parts 101–42 and 101–48 of the Federal Property Management Regulations (41 CFR parts 101–42 and 101–48) cover the disposal of personal property under the custody and control of executive agencies located in the United States, the U.S. Virgin Islands, American Samoa, Guam,

Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau, except in part 102–39 of this subchapter B which applies to the replacement of all property owned by executive agencies worldwide using the exchange/sale authority and in sections 102–36.380 through 102–36.400 which apply to the disposal of excess property located in countries and areas not listed in this subpart. The legislative and judicial branches are encouraged to follow these provisions for property in their custody and control.

§ 102–35.10 How are these regulations for the disposal of personal property organized?

The General Services Administration (GSA) has divided its regulations for the disposal of personal property into the following program areas:

(a) Disposition of excess personal property (part 102–36 of this subchapter B).

(b) Donation of surplus personal property (part 102–37 of this subchapter B).

(c) Sale of surplus personal property (part 102–38 of this subchapter B).

(d) Replacement of personal property pursuant to the exchange/sale authority (part 102–39 of this subchapter B).

(e) Utilization and disposal of hazardous materials and certain categories of property (part 101–42 of the Federal Property Management Regulations (FPMR), 41 CFR 101–42).

(f) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 101–48 of the FPMR, 41 CFR 101–48).

(g) Utilization, donation, and disposal of foreign gifts and decorations (part 102–42 of this subchapter B).

§ 102–35.15 What are the goals of GSA's personal property regulations?

The goals of GSA's personal property regulations are to—

(a) Reduce procurement costs by maximum use of the exchange/sale authority for the replacement of personal property;

(b) Improve the identification and reporting of excess personal property;

(c) Maximize the use of excess property as the first source of supply to minimize expenditures for the purchase of new property, when practicable;

Note to § 102–35.15(c): If there are competing requests among Federal agencies for excess property, preference will be given to agencies where the transfer will avoid a new Federal procurement. A transfer to an agency where the agency will provide the property to a non-Federal entity for the

non-Federal entity's use will be secondary to Federal use.

(d) Achieve maximum use of Government property through the donation of surplus personal property to State and local public agencies and other eligible non-Federal recipients;

(e) Obtain the optimum monetary return to the Government for surplus personal property sold and property sold under the exchange/sale authority; and

(f) Reduce management and inventory costs by appropriate use of the abandonment/destruction authority to dispose of unneeded personal property that has no commercial value or the estimated cost of continued care and handling would exceed the estimated sales proceeds (see FMR §§ 102–36.305 through 102–36.330).

§ 102–35.20 What definitions apply to GSA's personal property regulations?

The following are definitions of, or cross-references to, some key terms that apply to GSA's personal property regulations. Other personal property terms are defined in the sections or parts to which they primarily apply.

Abandoned or other unclaimed property (see § 101–48.001–1 of the Federal Property Management Regulations (41 CFR 101–48.001–1)).

Accountable Personal Property includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property.

Accountability means the ability to account for personal property by providing a complete audit trail for property transactions from receipt to final disposition.

Acquisition cost means the original purchase price of an item.

Capitalized Personal Property includes property that is entered on the agency's general ledger records as a major investment or asset. An agency must determine its capitalization level based on generally accepted accounting standards as defined by the American Institute of Certified Public Accountants.

Control means the ongoing function of maintaining physical oversight and surveillance of personal property throughout its complete life cycle using various property management tools and techniques taking into account the environment in which the property is located and its vulnerability to theft, waste, fraud, or abuse.

Excess personal property (see § 102–36.40 of this subchapter B).

Exchange/sale (see § 102–39.20 of this subchapter B).

Executive agency (see § 102–36.40 of this subchapter B).

Federal agency (see § 102–36.40 of this subchapter B).

Foreign gifts and decorations (see § 102–42.10 of this subchapter B).

Forfeited property (see § 101–48.001–5 of the FPMR (41 CFR 101–48.001–5)).

Inventory includes a formal listing of all accountable property items assigned to an agency, along with a formal process to verify the condition, location, and quantity of such items. This term may also be used as a verb to indicate the actions leading to the development of a listing. In this sense, an inventory must be conducted using an actual physical count, electronic means, and/or statistical methods.

National property management officer means an official, designated in accordance with § 102–36.45(b) of this subchapter B, who is responsible for ensuring effective acquisition, use, and disposal of excess property within your agency.

Personal property (see § 102–36.40 of this subchapter B).

Property management means the system of acquiring, maintaining, using and disposing of the physical assets of an organization or entity.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and

handling will be the responsibility of that agency until final ownership is determined by the judicial process.

Sensitive Personal Property includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, and classified property or records, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs.

Surplus personal property (see § 102–37.25 of this subchapter B).

Utilization means the identification, reporting, and transfer of excess personal property among Federal agencies to fill current or future authorized requirements in lieu of new procurement.

§ 102–35.25 What management reports must we provide?

(a) There are three reports that must be provided. The report summarizing the property provided to non-Federal recipients and the report summarizing exchange/sale transactions (see FMR 102–36.295 and FMR 102–39.75 respectively) must be provided every year (negative reports are required). In addition, if you conduct negotiated sales

of surplus personal property valued over \$5,000 in any year, you must report this transaction in accordance with FMR 102–38.115 (negative reports are not required for this report).

(b) The General Services Administration (GSA) may request other reports as authorized by 40 U.S.C. 506(a)(1)(A).

§ 102–35.30 What actions must I take regardless of the property disposition method?

Regardless of the disposition method used, you should take the following actions.

(a) You must maintain property in a safe, secure, and cost-effective manner until final disposition.

(b) You have authority to use the abandonment/destruction provisions at any stage of the disposal process (see §§ 102–36.305 through 102–36.330 and § 102–38.70 of this subchapter B).

(c) You must implement policies and procedures to remove sensitive or classified information from property. Agency-affixed markings should be removed, if at all possible, prior to property permanently leaving your agency's control.

(d) Government property may only be used as authorized by your agency. Title to Government property may not be transferred to a non-Federal entity unless through official procedures specifically authorized by law.

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