



MAY 5 2005

MEMORANDUM FOR ROBERT A. HOLCOMBE  
DIRECTOR  
PERSONAL PROPERTY MANAGEMENT POLICY  
DIVISION (MTP)

FROM: RALPH J. DESTEFANO, DIRECTOR  
REGULATORY AND FEDERAL ASSISTANCE  
PUBLICATIONS DIVISION (VIR)

SUBJECT: FPMR 2004-101-1, Disposition of Seized, Forfeited, Voluntarily  
Abandoned, and Unclaimed Personal Property

Attached is a comment received on the subject FAR case published at 70 FR 15792;  
March 29, 2005. The comment closing date was April 28, 2005.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2004-101-1-1	04/28/05	04/28/05	FSS (FBP)

Attachment

2004-101-1-1



Thomas P. Nugent  
04/28/2005 04:34 PM

To: fpmrcase.2004-101-1@gsa.gov  
cc: Robert A. Holcombe/MTP/CO/GSA/GOV@GSA, David M. Robbins/FBP/CO/GSA/GOV@GSA, Roman J. Marciniak/FBP/CO/GSA/GOV@GSA, Lynne M. Marciniak/FBP/CO/GSA/GOV@GSA, Lynne M.  
Subject: Fw: abandoned and forfeited property regulation (FPMR case 2004-101-1)

Attached below are the comments from the FSS Property Management Division (FBP) on the proposed FPMR/FMR revision on the disposition of seized and forfeited, voluntarily abandoned and unclaimed property (FPMR case #2004-101-1) In addition to our comments 1 thru 15, please note additional comments on items 6 and 7 by Mr. Robbins of this office.

Note to Bob Holcombe - MTP: - Bob, because of the pending reorganizations within the Office of Governmentwide Policy and the uncertainty as to who will be handling this particular draft regulatory revision, we are forwarding you a copy of these comments so that you can ensure that they are taken under review and consideration as the draft revision goes forward.

----- Forwarded by Thomas P. Nugent/FBP/CO/GSA/GOV on 04/28/2005 04:20 PM -----

David M. Robbins  
04/26/2005 08:46 PM

To: Thomas P. Nugent/FBP/CO/GSA/GOV@GSA, Roman J. Marciniak/FBP/CO/GSA/GOV  
cc: Sharon Chen/LP/CO/GSA/GOV, Thomas P. Nugent/FBP/CO/GSA/GOV, Joseph M. Hvorecky/3F/R03/GSA/GOV, Rickey D. Parker/3FP-W/R03/GSA/GOV, Charles Robinson/3FP-W/R03/GSA/GOV, Sherlean P. Route/3FPC-W/R03/GSA/GOV, Karen W. Somerville/3FP-W/R03/GSA/GOV  
Subject: Re: abandoned and forfeited property regulation (FPMR case 2004-101-1)

Tom.....

Very comprehensive comments.....thanks!

A few comments I would offer....

#6. I think we should include that we, GSA, working with counsel have concurred in TSA's determination of that being voluntarily abandoned property.

#7 Since FSS doesn't actually have a National Capital Region, I would concur the reference should be Reg 3/NCR.

Dave

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Sent from my BlackBerry Wireless Handheld  
Thomas P. Nugent

**From:** Thomas P. Nugent  
**Sent:** 04/26/2005 05:17 PM  
**To:** David Robbins; Roman Marciniak  
**Cc:** Sharon Chen; Thomas Nugent; Joseph Hvorecky; Rickey Parker; Charles Robinson; Sherlean Route; Karen Somerville  
**Subject:** abandoned and forfeited property regulation (FPMR case 2004-101-1)

Dave/Roman

The Federal Register of March 29, 2005, On pages 15792 - 15797, published a proposed rule on the disposition of seized, forfeited, voluntarily abandoned and unclaimed personal property. This is a plain english rewrite/revision to the existing regulation at FPMR Part 101-48. The new regulation will be at

2004-101-1-1

FMR Part 102-41. This draft reg. was not previously forwarded to this division for review prior to the Federal Register notice. Any comments we have are due to MVA by April 28. I believe Sharon Chen in LP is reviewing the proposed rule separately but she asked that we forward her a copy of any comments we come up with prior to our submission to MVA. The proposed rule notice in the Federal Register has very specific directions as to how any comments we have are to be forwarded and/or addressed to MVA. I have reviewed the proposed rule and am forwarding the attached comments or observations for your review and consideration. I have numbered the comments individually to try to make it easier for you to identify them during your review. I believe one or both of you are also looking at the draft regulation and may have separate or additional comments to those attached below. I am forwarding a copy of this message to Sharon also so that she has a chance to look at it in a timely manner. I am also forwarding the message to Joe in Region 3 and several of the NCR staff who are or have been involved in the disposition of seized and forfeited property previously in case they have any comments or observations to offer.

(Note: If and when we submit any comments to MVA, we should forward cc: copies to Bob Holcombe in MTP and to Julie Johnson in FPP.)

Reminder: our comments will be due by c.o.b. on Thursday, April 28.

#### COMMENTS OR OBSERVATIONS ON DRAFT FMR PART 102-41

1. Title of Part 102-41 - The title of the draft part is "Disposition of Seized, Forfeited, Voluntarily Abandoned and Unclaimed Personal Property". We have no objection to the title as drafted. As an observation, we assume the term "disposition" is being used in a generic sense to collectively cover the processes of utilization, donation, sales and other disposal (i.e., abandonment, destruction, etc.). The title of the existing FPMR Part 101-48 uses the phrase "utilization, donation or disposal". In the past, in the FPMR at least, the term "disposal" has been used in a more narrow sense to cover sales and final disposition processes.

2. Section 102-41.5 - ("What does this part cover?") - in this section dealing with the scope of the part, it states that "This part covers the disposal of seized, forfeited,..." etc. The following sentence says "Disposition of such personal property..." Presumably, the section is using the terms "disposal" and "disposition" interchangeably whereas, as noted above, those terms have been used somewhat differently in meaning or context previously. Since the title of the part refers to "disposition", shouldn't that term be used in the first sentence of this section instead of the term "disposal"?

3. Section 102-41.5 - In the second sentence of this section, referring specifically to seized, forfeited, abandoned and unclaimed property located outside of the United States and its territories, the draft language states that, "Disposition of such personal property located elsewhere must be in accordance with holding agency regulations" It would seem possible or likely that some or many agencies with little involvement or expertise in this subject matter may fall back on generic government-wide abandoned, forfeited, unclaimed property regulations or procedures when drafting their internal agency regulations or procedures. In such cases, their internal regulations might tell them to submit or report such property to GSA for disposition. The above-cited second sentence of this draft section might then be used by the holding agency to argue that GSA must take possession of the property or assume the responsibility to dispose of the property. Do we need to insert an additional phrase in this sentence or a separate following sentence to preclude such a situation. For example, we could add at the end of the second sentence the phrase "...provided they are not in conflict with this section." or words to that affect. Or we could possibly add the phrase "...pursuant to applicable statutory authority." Perhaps we need to discuss this with LP to ascertain whether such additional language is needed or advisable. (Note: with respect to my comment here, I would assume this would deal almost exclusively with abandoned or unclaimed property since seized and forfeited property procedures are presumably not applicable outside of the U.S. and its territories?)

4. Section 102-41.20 - In this section covering definitions used in this part, we note that the term "beer" has been substituted for the term "malted beverages" found in the current FPMR part 101-48. We assume that the briefer definition of "beer", as drafted, is comparable to the longer definition of "malted

beverages" in the FPMR from the point of legal sufficiency.

5. Section 102-41.20 - In the definition of "unclaimed property" there is no reference to the property being subject to the filing of a claim by the former owner(s) for a three year period (as is mentioned in the existing regulation). Is that a relevant point that needs to be, or should be, included in the definition?

6. Section 102-41.20 - In the definition of "voluntarily abandoned property", the draft says there "must be evidence" that the property was intentionally and voluntarily abandoned. The existing regulation, at FPMR 101-48.001-8, does not contain this additional requirement. Can this evidence be circumstantial in nature? It would seem likely that, in many cases, there would not be direct "smoking glove"-type evidence, rather one might have to make a common-sense deduction from the circumstances of the case. An example would be property dropped in "amnesty boxes" adjacent to security checkpoints or gates at airports throughout the country. The Transportation Security Administration (TSA) which is the federal agency responsible for security screening at airports has construed property being left in amnesty boxes as being "voluntarily abandoned" even though there is no written documentation from the original owners to that effect.

7. Section 102-41.30(a) - It might be advisable to make a slight change in the language in this section regarding seized property subject to court proceedings for forfeiture for which the seizing agency has filed a request for the property for its official use. The statement that "the GSA regional office will apply to the court for an order to turn the property over to the agency should forfeiture be decreed" is not specific enough. My understanding is that the GSA National Capital Region (or Region 3?) is the GSA regional office with nationwide responsibility for the screening and disposition of seized and forfeited property reported to GSA. Through the years, GSA-NCR has been responsible for filing these type of applications to the federal district courts on behalf of seizing Federal agencies. I believe that is still the case even though it is not stated explicitly in the current FPMR Part 101-48. The draft language of this section might lead some seizing or holding agencies into thinking that any of the GSA regional offices can or would file the appropriate application with the federal district court with jurisdiction. We should clarify or confirm the current procedures with Region 3 and NCR. We would suggest that the reference to "the GSA regional office" be changed to "GSA National Capital Region" or GSA Region 3/NCR as appropriate.

8. Section 102-41.30(b)(4) - Shouldn't the term "destruction" be changed to read "abandonment or destruction"? In the normal disposal process for excess and surplus personal property, property not utilized, donated or sold is usually authorized for "abandonment or destruction" not just "destruction".

9. Section 102-41.35 - the list of types of forfeited, abandoned or unclaimed property that is not reportable to GSA, while fairly comprehensive in nature, is missing one major category of property. In the late 1980s (I believe) there was some legislation with a title like "Comprehensive Drug Control Act" or "Comprehensive Crime Control Act" dealing with all types of Justice Department enforcement programs, in particular enforcement program of the Drug Enforcement Administration (DEA). The language of that statute basically gave Justice control over the disposition of property seized by DEA and most other Justice agencies. Justice gave most of the disposal responsibilities for that law to the U.S. Marshals Service (USMS). There probably needs to be some reference to that law by name and/or U.S. Code citation if the information is available. (Note: in the post 9/11 period some of those enforcement agencies that were part of Justice may have been shifted to the Dept. of Homeland Security. I don't know whether DHS picked up any of the responsibility for disposing of forfeited property that was held by DOJ/USMS prior to 9/11.)

10. Section 102-41.75 - regarding the retention of proceeds from the sale of forfeited property, doesn't GSA have the authority to retain that portion of the proceeds to cover its costs when it sells forfeited property on behalf of the seizing agency?

11. Section 102-41.80 - The last sentence states that the receiving agency (i.e., to whom property is voluntarily abandoned) "ordinarily documents receipt of the property to evidence its voluntary relinquishment." As the term "ordinarily" implies, this does not happen in all cases. As an example, the large volume of property that is "voluntarily" abandoned by air travel passengers in airport "amnesty boxes" every year is normally not documented by the Transportation Security Administration (TSA).

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12. Section 102-41.105 - should there be a reference to "abandonment or destruction" after the word "sale" in the first sentence. (See our comment #8 above.)

13. Section 102-41.115 - Does GSA have the authority to retain a portion of the proceeds to cover its costs when it sells "voluntarily abandoned" property on behalf of receiving federal agencies? If so, does that need to be mentioned or would the reference to an agency having statutory authority to do otherwise be sufficient?

14. Section 102-41.130(b) - In cases where unclaimed property has been placed in official use by the finding agency after title vests in the government, and the agency no longer needs it for official use and reports it to GSA within the 3 year period after the title vested in the U.S., should the reporting agency include information in their report of excess specifying the property was originally unclaimed property and on what date title vested. RATIONALE: if the original owner has 3 years to file a claim, GSA and any potential federal transferee agency probably needs to be aware of that information since court proceedings and/or financial reimbursement to the owner are a possibility.

15. Section 102-41.180 - In cases where GSA sells the unclaimed property on behalf of the finding agency, do we have the authority to retain that portion of the proceeds necessary to cover our costs.