

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: February 27, 2007.

**Susan Parker Bodine**,

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

■ 40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
IN	Elm Street Ground Water Contamination	Terre Haute.	*
MS	Sonford Products	Flowood.	*
TX	Bandera Road Ground Water Plume	Leon Valley.	*
TX	East 67th Street Ground Water Plume	Odessa.	*
WA	Lockheed West Seattle	Seattle.	*

(a) A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≥ 28.50).  
 C = Sites on Construction Completion list.  
 S = State top priority (HRS score need not be ≥ 28.50)  
 P = Sites with partial deletion(s).

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**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 102–35**

[FMR Amendment 2007–01; FMR Case 2004–102–1; Docket 2007–001; Sequence 3]

RIN 3090–AH93

**Federal Management Regulation; FMR Case 2004–102–1, Disposition of Personal Property**

**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 revising coverage on personal property and moving it into subchapter B of the FMR. This final 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.

**DATES:** *Effective Date:* April 6, 2007.

**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 2007–01, FMR Case 2004–102–1.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the **Federal Register** on September 12, 2006 (71 FR 53646) soliciting comments on proposed changes to 41 CFR part 102–35. The due date for comments was extended in a **Federal Register** proposed rule document on October 18, 2006 (71 FR 61445). Comments were received from three respondents relating to the sale of personal property. These comments do not directly address any provisions contained in this final rule, and will be held for consideration when the regulation covering the sale of Federal personal property assets, Federal Management Regulation (FMR) part 102–38, is released for comment. FMR part 102–38 is currently being reviewed within GSA for revisions.

This final 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). 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.

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

#### B. Executive Order 12866

This regulation is excepted from the definition of "regulation" or "rule" under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

#### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); 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 final 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 final 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: February 7, 2007.

**Lurita Doan,**  
*Administrator of General Services.*

■ For the reasons set forth in the preamble, GSA amends 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 or am I authorized to 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 are contained in this part and in parts 102-36 through 102-42 of this subchapter B as well as in parts 101-42 and 101-45 of the Federal Property Management Regulations (FPMR)(41 CFR parts 101-42 and 101-45). With two exceptions, these regulations 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. The exceptions to this coverage are 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 §§ 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, i.e., foreign excess personal property. 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) Disposition of seized and forfeited, voluntarily abandoned, and unclaimed personal property (part 102-41 of this subchapter B).

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

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

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

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

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

(b) 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(b):** 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.

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

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

(e) 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 for which 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 in the FMR (CFR Parts 102-36 through 102-42). Other personal property terms are defined in the sections or parts to which they primarily apply.

*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 thresholds as discussed in Financial Accounting Standard Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 6 Accounting for Property, Plant and Equipment, Chapter 1, paragraph 13.

*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* (for the definition of relevant terms, see § 102–42.10 of this subchapter B).

*Forfeited property* (see § 102–41.20 of this subchapter B).

*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 personal property 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, 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.

#### **§ 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 §§ 102–36.295 and 102–39.75 respectively of this subchapter B) 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 § 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 or am I authorized to take regardless of the property disposition method?**

Regardless of the disposition method used:

(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 prior to disposal. Agency-affixed markings should be removed, if at all

possible, prior to personal property permanently leaving your agency's control.

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

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 211**

[Docket No. 2006–24141, Notice No. 2]

RIN 2130–AB77

#### **Rules of Practice: Direct Final Rulemaking Procedures**

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In October 2006, FRA proposed to amend its rules of practice by adopting direct final rulemaking procedures intended to expedite the publication of routine or noncontroversial changes. FRA received no comments to this proposal, and in this rule adopts its proposed direct final rulemaking procedures without change.

**DATES:** This rule is effective on April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Patricia V. Sun, Trial Attorney, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20005 (telephone: (202) 493–6038).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On October 11, 2006, FRA proposed to amend its Rules of Practice (49 CFR Part 211) to adopt direct final rulemaking procedures which would expedite its rulemaking process for noncontroversial regulatory changes to which no adverse comment was anticipated (71 FR 59698). The proposed direct final rulemaking procedures, closely modeled upon those of the Office of the Secretary of Transportation (OST) (January 30, 2004, 69 FR 4455), would allow FRA to reduce the time necessary to develop, review, clear and publish routine rules to which no adverse public comment was anticipated by eliminating the requirement to publish separate