

§ 102-41.5

through a State agency for surplus property (SASP)?

102-41.225 Are there special provisions to reporting and transferring drug paraphernalia forfeited under 21 U.S.C. 863?

102-41.230 May SASPs pick up or store donated drug paraphernalia in their distribution centers?

102-41.235 May we sell forfeited drug paraphernalia?

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

SOURCE: 71 FR 41370, July 21, 2006, unless otherwise noted.

Subpart A—General Provisions

§ 102-41.5 What does this part cover?

(a) This part covers the disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property under the custody of any Federal agency located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau. Disposition of such personal property located elsewhere must be in accordance with holding agency regulations. Please see §102-36.380 of this subchapter B regarding the disposal of foreign excess. The General Services Administration (GSA) does not normally accept responsibility for disposal of property located outside the United States and its territories. Additional guidance on disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property that requires special handling (e.g., firearms, hazardous materials) is contained in part 101-42 of this title. Additional guidance on the disposition of firearms (as scrap only), distilled spirits, wine, beer, and drug paraphernalia is provided in subpart E of this part.

(b) These regulations do not include disposal of seized, forfeited, voluntarily abandoned, and unclaimed personal property covered under authorities outside of the following statutes:

(1) 40 U.S.C. 552, Abandoned or Unclaimed Property on Government Premises.

(2) 40 U.S.C. 1306, Disposition of Abandoned or Forfeited Property.

(3) 26 U.S.C. 5688, Forfeited Distilled Spirits, Wines, and Beer.

(4) 26 U.S.C. 5872, Forfeited Firearms.

41 CFR Ch. 102 (7-1-14 Edition)

(5) 21 U.S.C. 863, Drug Paraphernalia.

§ 102-41.10 To whom do “we”, “you”, and their variants refer?

Use of pronouns “we”, “you”, and their variants throughout this part refer to the agency having custody of the personal property.

§ 102-41.15 How do we request a deviation from these requirements and who can approve it?

See §§102-2.60 through 102-2.110 of this chapter to request a deviation from the requirements of this part.

DEFINITIONS

§ 102-41.20 What definitions apply to this part?

The following definitions apply to this part:

Beer means an alcoholic beverage made from malted cereal grain, flavored with hops, and brewed by slow fermentation.

Distilled spirits, as defined in the Federal Alcohol Administration Act (27 U.S.C. 211), means ethyl alcohol; hydrated oxide of ethyl; or spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

Drug paraphernalia means any equipment, product, or material primarily intended or designed for use in manufacturing, compounding, converting, concealing, processing, preparing, or introducing into the human body a controlled substance in violation of the Controlled Substances Act (see 21 U.S.C. 863). It includes items primarily for use in injecting, ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body.

Eleemosynary institution means any nonprofit health or medical institution that is organized and operated for charitable purposes.

Firearms means any weapon, silencer, or destructive device designed to, or readily convertible to, expel a projectile by the action of an explosive, as defined in the Internal Revenue Code (26 U.S.C. 5845). Excludes antique firearms as defined in 26 U.S.C. 5845(g).

Federal Management Regulation

§ 102-41.35

Forfeited property means personal property that the Government has acquired ownership of through a summary process or court order pursuant to any law of the United States.

Seized property means personal property that has been confiscated by a Federal agency, and whose care and handling will be the responsibility of the agency until final ownership is determined by the judicial process.

Unclaimed property means personal property unknowingly abandoned and found on premises owned or leased by the Government, i.e., lost and found property.

Voluntarily abandoned property means personal property abandoned to any Federal agency in a way that immediately vests title to the property in the Government. There must be written or circumstantial evidence that the property was intentionally and voluntarily abandoned. This evidence should be clear that the property was not simply lost by the owner.

Wine means the fermented juice of a plant product, as defined in 27 U.S.C. 211.

RESPONSIBILITY

§ 102-41.25 Who retains custody and is responsible for the reporting, care, and handling of property covered by this part?

You, the holding agency, normally retain physical custody of the property and are responsible for its care and handling pending final disposition. With the exception of property listed in § 102-41.35, you must report promptly to the GSA forfeited, voluntarily abandoned, or unclaimed personal property not being retained for official use and seized property on which proceedings for forfeiture by court decree are being started or have begun. In general, the procedures for reporting such property parallel those for reporting excess personal property under part 102-36 of this subchapter B.

§ 102-41.30 What is GSA's role in the disposition of property covered by this part?

(a) *Seized property subject to court proceedings for forfeiture.* (1) If the seizing agency files a request for the property for its official use, the GSA Region 3/

National Capital Region will apply to the court for an order to turn the property over to the agency should forfeiture be decreed. If no such request has been filed, GSA will determine whether retention of the property for Federal official use is in the Government's best interest, and, if so, will apply to the court to order delivery of the property to—

(i) Any other Federal agency that requests it; or

(ii) The seizing agency to be retained for a reasonable time in case the property may later become necessary to any agency for official use.

(2) In the event that the property is not ordered by competent authority to be forfeited to the United States, it may be returned to the claimant.

(b) *Forfeited, voluntarily abandoned, or unclaimed property.* When forfeited, voluntarily abandoned, or unclaimed property is reported to GSA for disposal, GSA will direct its disposition by—

(1) Transfer to another Federal agency;

(2) Donation to an eligible recipient, if the property is not needed by a Federal agency and there are no requirements for reimbursement to satisfy the claims of owners, lien holders, or other lawful claimants;

(3) Sale; or

(4) Abandonment and destruction in accordance with § 102-36.305 of this subchapter B.

§ 102-41.35 Do we report to GSA all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not retained for official use?

Yes, send GSA reports of excess (see § 102-36.125 of this subchapter B) for all seized personal property subject to judicial forfeiture as well as forfeited, voluntarily abandoned, or unclaimed personal property not required for official use, except the following, whose disposition is covered under other statutes and authorities:

(a) Forfeited firearms or munitions of war seized by the Department of Commerce and transferred to the Department of Defense (DOD) pursuant to 22 U.S.C. 401.

(b) Forfeited firearms directly transferable to DOD by law.