

Department of the Treasury
Executive Office for Asset Forfeiture

Directive Number: 38

DATE: November 7, 2003

SUBJECT: Disposition Procedures for Non-Forfeited Personal Property¹

This directive establishes policies and procedures for the disposition of personal property items that are held with items seized for forfeiture by law enforcement bureaus participating in the Treasury Forfeiture Fund. Generally, the governing regulations for the disposition of such articles are the Federal Property Management Regulations maintained by the General Services Administration (GSA). See 41 CFR Ch. 101 Subparts 101-48.1, 101-48.2, and 101-48.3. The procedures for handling property governed by this directive are explained below.

I GENERAL POLICY

To ensure that personal property is handled in such a manner that the rights of individuals who have a legitimate claim for such property are protected in accordance with the law. To ensure that such property does not delay the disposition of property seized for forfeiture and that the handling and storage of such property does not create an economic burden for the Treasury Department and the bureaus participating in the Treasury Forfeiture Fund.

II DEFINITIONS

A. Voluntarily Abandoned Property – Personal property abandoned to a Federal agency in such a manner as to vest title thereto in the United States. In general, when an individual signs a document stating that they relinquish all title to a designated piece of property, that property is considered to be voluntarily abandoned. 41 CFR 101-48.001-8.

B. Abandoned or Unclaimed Personal Property – Property that has not been seized as evidence or for forfeiture but is in the possession of the seizing agency. Examples are furniture, appliances, and other household items inside a seized residence; suitcases left at an airport by an arrestee; clothing, suitcases or other personal objects left in vehicle, etc. 41 CFR 101-48.001-1.²

¹ This Directive applies to a type of property often possessed by law enforcement agencies and most accurately identified as "non-forfeited personal property." The abbreviated term "personal property" is used throughout this Directive to track the language of and to ensure compliance with the appropriate GSA regulations governing the disposition of such property. "Personal effects," a term used by some agencies when referring to non-forfeited personal property, are personal property covered by this Directive.

² The definition in the GSA regulations states that abandoned or unclaimed personal property is personal property found on premises owned or leased by the government. Law enforcement

III RESPONSIBILITIES

A. Agencies that participate in the Treasury Forfeiture Fund (TFF) will develop internal procedures for carrying out the policies and procedures outlined in this directive.

B. The Treasury Forfeiture Fund will provide funds for the National Seized Property Contractors to manipulate and otherwise assist in the disposition of personal property, which is directly impeding the disposition of a forfeited asset or which is in the possession of the seizing agency due to the seizure of an asset(s) for forfeiture.

C. A special identifier will be used at the Bureau of Customs and Border Patrol for the deposit of proceeds from any sale of voluntarily abandoned property, or of abandoned or unclaimed property. The National Finance Center (NFC) and other appropriate personnel will develop a plan for ultimately transferring these proceeds to the general fund of the U.S. Treasury.

IV PROCEDURE

A. Voluntarily Abandoned Property

The bureaus are encouraged to use the voluntary abandonment procedure to the greatest extent possible. In general, property that has been voluntarily abandoned to the United States may be disposed of immediately in the same manner as excess property is handled. Regulations governing disposition of excess property are 41 CFR 102-36.245 to 102-6.280. Bureaus will enact procedures and maintain adequate records to show that the property has been voluntarily abandoned by the rightful owner(s). Normally, such property will remain in the custody of and be the responsibility of the holding agency.

B. Abandoned or Unclaimed Personal Property

Bureaus are encouraged to minimize the amount of such property in their custody. Whenever possible, personal property should be removed from residences, autos, vessels, etc, as soon as possible by the rightful owner(s) or their representatives.

actions often involve the seizure of assets not on government property. Normally those assets are brought to a government facility for storage. For example, a vehicle containing personal property is seized and brought to the national seized property contractor's holding facility. In this situation, it is the position of the Treasury Department that the asset is considered found on property owned or leased by the government, and the procedures outlined in this directive should be employed to dispose of the personal property.

Before disposal can occur, title to the property must become vested in the United States. Title vests in the United States after the property has been held for a period of thirty days. However, even after the thirty-day time period has passed, title reverts to an owner when a proper claim is filed. 41 CFR 101-48.102-1. A claim can be filed up to three years after the thirty-day period. 41 CFR 101-48.306-1.

In the event that a claim is filed and the personal property is no longer available to be remitted to its rightful owner, the claim will be satisfied in accordance with the procedures defined in the GSA's regulations in 41 CFR 101-48.306-1. Specifically, the proceeds from any sale of abandoned or other unclaimed property shall be kept in a suspense fund by the National Finance Center for deposits of such proceeds. Reimbursement of a proper claim will come from this fund, and shall not exceed the proceeds realized from the disposal of the property, minus disposal costs and costs of the care and handling of such property.

Notice prior to disposal of abandoned or other unclaimed property.

Bureaus will develop procedures to ensure that every reasonable attempt has been made to notify the rightful owner(s) of abandoned or unclaimed property in their custody. Adequate records will be maintained to properly document these attempts. At a minimum, at least one written notification will be provided to the rightful owner(s) and any known representatives (e.g., counsel) of the pending action. The notification will advise all parties that unless a proper claim is filed within 30 days of the receipt of the notification, that title will vest in the United States and appropriate disposition actions will commence. The notification should clearly state what types of disposition may occur (e.g., sale, destruction, donation, etc.). The notification should also advise the parties how to make a proper claim and where such claim must be filed. Once the thirty-day time frame for claim filing has passed, bureaus will immediately commence an appropriate disposition action. Sample notice letters are attached to this directive [Attachments A and B].

C. Note on Personal Property Located Inside or Related to Real Property Subject to Forfeiture

In general, when real property is seized for forfeiture, no action should be taken with regard to any personal property until the forfeiture has been perfected. Bureaus are encouraged to include all personal property located in or related to the real property in the Final Order of Forfeiture, if they are subject to forfeiture. Such property shall be disposed of using the normal forfeited property disposition procedures.

If the personal property is not included in the Final Order of Forfeiture, then once the real property is forfeited, the procedures outlined in this directive should be employed to dispose of the personal property. That is, first seek voluntary

abandonment of such property. If that does not occur, then send notice, and treat the property as abandoned or other unclaimed property pursuant to this policy directive.

D. Disposition

Voluntarily abandoned property, and abandoned and other unclaimed personal property: Bureaus should use existing excess property procedures for disposition of voluntarily abandoned and abandoned and other unclaimed property.³ There are generally three options for disposal of the property: (1) destruction; (2) sale; (3) donation.

Importance of Value: Each bureau will develop procedures to ensure that all personal property taken into their custody has been evaluated with a fair market value. The value in relation to the cost of care and handling of, including storing, the personal property is a large factor in determining the procedures for destruction of voluntarily abandoned or abandoned or unclaimed personal property. For additional guidance, see GSA's abandonment/destruction regulations at 41 CFR 102-36.305 through 102-36.330.

1. **Destruction:** It is recommended that bureaus destroy all property that is deemed appropriate for destruction. When considering destruction of property, bureaus should follow these recommended guidelines, which are based on GSA regulations. To determine if the property is appropriate for destruction, the agency must make a written determination that the property has no commercial value⁴ or that the estimated cost of its continued care and handling⁵ would exceed the estimated proceeds from its sale. 41 CFR 102-36.305; 40 USC 527. This written determination must be made by an authorized official of your agency, and must be approved by a reviewing official who is not directly accountable for the property. 41 CFR 102-36.310. Once this determination has been made and approved, the agency may destroy or dispose of the property in accordance with the excess property regulations pursuant to 41 CFR 102-36.245 through 102-36.280. Property deemed suitable for destruction need not be reported to GSA. 31 CFR 102-36.220.

³ GSA regulations allow voluntarily abandoned property to be handled as excess property. Further, 40 USC 102(3) defines excess property as "property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities." Therefore, abandoned or other unclaimed property may also be disposed of in the same manner as excess property.

⁴ An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap). 41 CFR 102-36.305.

⁵ "Care and handling" includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting such property, and destroying or rendering innocuous property which is dangerous to public health or safety. 41 CFR 102-36.45(d)(3).

If abandoned and other unclaimed personal property is not deemed appropriate for destruction (i.e., because the value of the property exceeds the cost of its continued care and handling, or because it has commercial value), then the property may be considered for sale or donation. GSA reporting requirements would apply to such property.

2. **Sale:** It is important to note that if property is sold, then the proceeds from that sale must remain available in a special fund for possible future claims. 41 CFR 101-48.306-1. Those proceeds will not be deposited into the Treasury Forfeiture Fund, but rather into a suspense account at the National Finance Center. See Section IV.B above. Bureaus are encouraged to minimize disposition expenses to the greatest extent possible by destroying low valued property and considering donation whenever possible.

Sale of personal effects pursuant to this directive may be handled in the same manner as sale of forfeited property, including posting notice of such sale and the preferred use of public auctions. Because of the costs associated with advertising and sale of property, sale should be considered only when the value of the property is significantly higher than the cost of care and handling of the property.

3. **Donation:** Donation of such property is encouraged where appropriate. Procedures for donation are governed by 41 CFR 102-36.320, and 41 CFR part 102-37.

4. **Use of National Seized Property Contractor:** The National Seized Property contractors may be tasked (at the expense of the Treasury Forfeiture Fund) to provide services to assist in disposition activities, provided the property is directly impeding the disposition of associated assets seized for forfeiture. Any expenses incurred by the contractor should be applied against the asset seized for forfeiture.

5. **Reporting and Record Keeping:** Bureaus must file reports as required by GSA. We anticipate that most property covered by this directive will be considered appropriate for destruction and therefore will not be required to be reported. For those items of property that are not appropriate for destruction, i.e., because the value of the property exceeds the cost of care and handling, GSA reporting requirements must be met. As always, bureaus must keep accurate records of all property in its custody, its value, the costs incurred in the care and handling of the property, the disposition of such property, and the proceeds received as a result of any sale of the property. Bureaus may task the National Seized Property Contractor to keep such records.