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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-49 and 102-42

[FPMR Amendment H-206]

RIN 3090-AH09

Utilization, Donation, and Disposal of Foreign Gifts and Decorations

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on the utilization, donation, and disposal of foreign gifts and decorations into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

EFFECTIVE DATE: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202-501-3846.

SUPPLEMENTARY INFORMATION:

A. Background

The purpose of this final rule is to update, streamline, and clarify part 101-49 and move the part into the Federal Management Regulation (FMR). The rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency must follow the language contained in both the question and its answer.

B. Executive Order 12866

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

C. Regulatory Flexibility Act

This final 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 this 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 Parts 101-49 and 102-42

Conflict of interests, Decorations, medals, awards, Foreign relations, Government property, Government property management.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101-49 is revised to read as follows:

PART 101-49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

§ 101-49.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102- 220).

For information on utilization, donation, and disposal of foreign gifts and decorations previously contained in this part, see FMR part 42 (41 CFR part 102-42).

CHAPTER 102—[AMENDED]

2. Part 102-42 is added to subchapter B of chapter 102 to read as follows:

PART 102-42—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

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102-42.155 Can foreign gifts or decorations be destroyed?

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

Subpart A—General Provisions

§ 102–42.5 What does this part cover?

This part covers the acceptance, utilization, donation, and disposal of gifts and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government you should refer to § 102–36.405.

Definitions

§ 102–42.10 What definitions apply to this part?

The following definitions apply to this part:

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

- (1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;
- (2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;
- (3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;
- (4) A member of a uniformed service as specified in 10 U.S.C 101;
- (5) The President and the Vice President;
- (6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and
- (7) The spouse of an individual described in paragraphs (1) through (6) of this definition of *employee* (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of *employee*.

Employing agency means:

- (1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;
- (2) The Committee on Standards of Official Conduct of the House of

Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

Foreign government means:

- (1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;
- (2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and
- (3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

Minimal value means a retail value in the United States at the time of acceptance of \$260 or less, except that:

- (1) GSA will adjust the definition of *minimal value* in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and
- (2) Regulations of an employing agency may define *minimal value* for its employees to be less, but not more than, the value provided under this definition.

Care, Handling and Disposition

§ 102–42.15 Under what circumstances may an employee retain a foreign gift or decoration?

Employees, with the approval of their employing agencies, may accept and retain:

- (a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property

of the U.S. Government, not the employee, and must be reported.

(b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

§ 102–42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain?

(a) *Non-monetary gifts or decorations.* When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

- (1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.
- (2) The employing agency determines if it will keep the gift or decoration for official use.
- (3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under § 102–42.95.
- (4) If GSA does not transfer the gift or decoration during

Federal utilization screening, the employee may purchase the gift or decoration (see § 102–42.140).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under part 101–44 of this title.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under part 101–45 of this title.

(b) *Monetary gifts.* When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

- (i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or
- (ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

§ 102–42.25 Who retains custody of gifts and decorations pending disposal?

(a) The employing agency retains custody of gifts and decorations that employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which

employees decline to purchase, or decorations that are not retained for official use or returned to donors.

Note to § 102-42.25(b): GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101-42 of this title.

§ 102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions?

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

§ 102-42.35 Can the employing agency be reimbursed for transfers of gifts and decorations?

No, all transfers of gifts and decorations to Federal agencies or donation through SASPs will be without reimbursement. However, the employing agency may require the receiving agency to pay all or part of the direct costs incurred by the employing agency in packing, preparation for shipment, loading, and transportation.

Appraisals

§ 102-42.40 When is a commercial appraisal necessary?

(a) A commercial appraisal is necessary when an employee indicates an interest in purchasing a gift or decoration and must be obtained before the gift or decoration is reported to GSA for screening.

(b) GSA may also require the employing agency to obtain a commercial appraisal of a gift or decoration that the agency no longer needs before accepting the agency's report of the item as excess personal property.

§ 102-42.45 Who obtains a commercial appraisal?

The employing agency obtains a commercial appraisal.

§ 102-42.50 Is there a special format for a commercial appraisal?

There is no special format for a commercial appraisal, but it must be:
 (a) On official company letterhead;
 (b) Prepared in the United States;
 (c) Dated; and
 (d) Expressed in U.S. dollars.

§ 102-42.55 What does the employing agency do with the appraisal?

The employing agency must attach the commercial appraisal to a Standard Form (SF) 120, Report of Excess Personal Property.

Special Disposals

§ 102-42.60 Who is responsible for gifts and decorations received by Senators and Senate employees?

Gifts and decorations received by Senators and Senate employees are deposited with the Secretary of the Senate for disposal by the Commission on Art and Antiquities of the United States Senate under 5 U.S.C. 7342(e)(2). GSA is responsible for disposing of gifts or decorations received by Members and employees of the House of Representatives.

§ 102-42.65 What happens if the Commission on Art and Antiquities does not dispose of a gift or decoration?

If the Commission on Art and Antiquities does not dispose of a gift or decoration, then it must be reported to GSA for disposal. If GSA does not dispose of a gift or decoration within one year of the Commission's reporting, the Commission may:

- (a) Request that GSA return the gift or decoration and dispose of it itself; or
- (b) Continue to allow GSA to dispose of the gift or decoration in accordance with this part.

§ 102-42.70 Who handles gifts and decorations received by the President or a member of the President's family?

The National Archives and Records Administration normally handles gifts and decorations received by the President or a member of the President's family.

§ 102-42.75 How are gifts containing hazardous materials handled?

Gifts containing hazardous materials are handled in accordance with the requirements and provisions of this part and part 101-42 of this title.

Subpart B—Utilization of Foreign Gifts and Decorations

§ 102-42.80 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the employing agency.

§ 102-42.85 What gifts or decorations must we report to GSA?

You must report to GSA gifts of more than minimal value, except for monetary gifts that have no historic or numismatic value (see § 102-42.20), or decorations the employee is not authorized to retain that are:

- (a) Not being retained for official use or have not been returned to the donor; or
- (b) Received by a Senator or a Senate employee and not disposed of by the Commission on Art and Antiquities of the United States Senate.

§ 102-42.90 What is the requirement for reporting gifts or decorations that were retained for official use but are no longer needed?

Non-monetary gifts or decorations that were retained for official use must be reported to GSA as excess property within 30 days after termination of the official use.

§ 102-42.95 How do we report gifts and decorations as excess personal property?

You must complete a Standard Form (SF) 120, Report of Excess Personal Property, and send it to the General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 120, "FOREIGN GIFTS AND/OR DECORATIONS", and include the following information:

Entry	Description
(a) Identity of Employee	Give the name and position of the employee.
(b) Description of Item	Give a full description of the gift or decoration, including the title of the decoration.
(c) Identity of Foreign Government.	Give the identity of the foreign government (if known) and the name and position of the individual who presented the gift or decoration.
(d) Date of Acceptance	Give the date the gift or decoration was accepted by the employee.

Entry	Description
(e) Appraised Value	Give the appraised value in United States dollars of the gift or decoration, including the cost of the appraisal. (The employing agency must obtain a commercial appraisal before the gift is offered for sale to the employee.)
(f) Current Location of Item	Give the current location of the gift or decoration.
(g) Employing Agency Contact Person.	Give the name, address, and telephone number of the accountable official in the employing agency.
(h) Purchase Interest or Donation Recommendation.	Indicate whether the employee wants to buy the gift, or whether the employee wants the gift or decoration donated to an eligible donee through GSA's surplus donation program. Document this interest in a letter outlining any special significance of the gift or decoration to the proposed donee. Also provide the mailing address and telephone number of both the employee and the proposed donee.
(i) Administration	Give the Administration in which the gift or decoration was received (for example, Clinton Administration).
(j) Multiple Items	Identify each gift or decoration as a separate line item. Report multiple gift items that make up a set (for example, a tea set, a necklace and matching earrings) as a single line item.

§ 102-42.100 How can we obtain an excess gift or decoration from another agency?

To obtain an excess gift or decoration from another agency, you would complete a Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, for the desired item(s) and submit the form to the General Services Administration, Property Management Division (FBP), Washington, DC 20406.

§ 102-42.105 What special information must be included on the SF 122?

Conspicuously mark the SF 122, "FOREIGN GIFTS AND/OR DECORATIONS", and include all information furnished by the employing agency as specified in § 102-42.95. Also, include on the form the following statement: "At such time as these items are no longer required, they will be reported to the General Services Administration, Property Management Division (FBP), Washington, DC 20406, and will be identified as foreign gift items and cross-referenced to this transfer order number."

§ 102-42.110 How must we justify a transfer request?

You may only request excess gifts and decorations for public display or other bona fide agency use and not for the personal benefit of any individual. GSA may require that transfer orders be supported by justifications for the intended display or official use of requested gifts and decorations. Jewelry and watches that are transferred for official display must be displayed with adequate provisions for security.

§ 102-42.115 What must we do when the transferred gifts and decorations are no longer required for official use?

When transferred gifts and decorations are no longer required for official use, report these gifts and decorations to the GSA as excess property on a SF 120, including the original transfer order number or a copy of the original transfer order.

Subpart C—Donation of Foreign Gifts and Decorations

§ 102-42.120 When may gifts or decorations be donated to State agencies?

If there is no Federal requirement for the gifts or decorations, and if gifts were not sold to the employee, GSA may make the gifts or decorations available for donation to State agencies under this subpart and part 101-44 of this title.

§ 102-42.125 How is donation of gifts or decorations accomplished?

The State Agencies for Surplus Property (SASP) must initiate the process on behalf of a prospective donee (e.g., units of State or local governments and eligible non-profit organizations) by:

(a) Completing a Standard Form (SF) 123, Transfer Order Surplus Personal Property, and submitting it to General Services Administration, Property Management Division (FBP), Washington, DC 20406. Conspicuously mark the SF 123 with the words, "FOREIGN GIFTS AND/OR DECORATIONS."

(b) Attaching an original and two copies of a letter of intent to each SF 123 submitted to GSA. An authorized representative of the proposed donee

must sign and date the letter, setting forth a detailed plan for use of the property. The letter of intent must provide the following information:

(1) Identifying the donee applicant, including its legal name and complete address, its status as a public agency or as an eligible nonprofit tax-exempt activity, and the name, title, and telephone number of its authorized representative;

(2) A description of the gift or decoration requested, including the gift's commercially appraised value or estimated fair market value if no commercial appraisal was performed; and

(3) Details on the planned use of the gift or decoration, including where and how it will be used and how it will be safeguarded.

§ 102-42.130 Are there special requirements for the donation of gifts and decorations?

Yes, GSA imposes special handling and use limitations on the donation of gifts and decorations. The SASP distribution document must contain or incorporate by reference the following:

(a) The donee must display or use the gift or decoration in accordance with its GSA-approved letter of intent.

(b) There must be a period of restriction which will expire after the gift or decoration has been used for the purpose stated in the letter of intent for a period of 10 years, except that GSA may restrict the use of the gift or decoration for such other period when the inherent character of the property justifies such action.

(c) The donee must allow the right of access to the donee's premises at

reasonable times for inspection of the gift or decoration by duly authorized representatives of the SASP or the U.S. Government.

(d) During the period of restriction, the donee must not:

(1) Sell, trade, lease, lend, bail, encumber, cannibalize or dismantle for parts, or otherwise dispose of the property;

(2) Remove it permanently for use outside the State;

(3) Transfer title to the gift or decoration directly or indirectly; or

(4) Do or allow anything to be done that would contribute to the gift or decoration being seized, attached, lost, stolen, damaged, or destroyed.

(e) If the gift or decoration is no longer suitable, usable, or needed by the donee for the stated purpose of donation during the period of restriction, the donee must promptly notify the General Services Administration, Property Management Division (FBP), Washington, DC 20406, through the SASP, and upon demand by GSA, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must comply with transfer or disposition instructions furnished by GSA through the SASP, and pay the costs of transportation, handling, and reasonable insurance during transportation.

(f) The donee must comply with all additional conditions covering the handling and use of any gift or decoration imposed by GSA.

(g) If the donee fails to comply with the conditions or limitations during the period of restriction, the SASP may demand return of the gift or decoration and, upon such demand, title and right to possession of the gift or decoration reverts to the U.S. Government. In this event, the donee must return the gift or decoration in accordance with instructions furnished by the SASP, with costs of transportation, handling, and reasonable insurance during transportation to be paid by the donee or as directed by the SASP.

(h) If the gift or decoration is lost, stolen, or cannot legally be recovered or returned for any other reason, the donee must pay to the U.S. Government the fair market value of the gift or decoration at the time of its loss, theft, or at the time that it became unrecoverable as determined by GSA. If the gift or decoration is damaged or destroyed, the SASP may require the donee to:

(1) Return the item and pay the difference between its former fair market value and its current fair market value; or

(2) Pay the fair market value, as determined by GSA, of the item had it not been damaged or destroyed.

Subpart D—Sale or Destruction of Foreign Gifts and Decorations

§ 102–42.135 Whose approval must be obtained before a foreign gift or decoration is offered for public sale?

The Secretary of State or the Secretary's designee must approve any sale of foreign gifts or decorations (except sale of foreign gifts to the employee, that is approved in this part).

§ 102–42.140 How is a sale of a foreign gift or decoration to an employee conducted?

Foreign gifts and decorations must be offered first through negotiated sales to the employee who has indicated an interest in purchasing the item. The sale price must be the commercially appraised value of the gift plus the cost of the appraisal. Sales must be conducted and documented in accordance with part 101–45 of this title.

§ 102–42.145 When is public sale of a foreign gift or decoration authorized?

A public sale is authorized if a foreign gift or decoration:

- (a) Survives Federal utilization screening;
- (b) Is not purchased by the employee;
- (c) Survives donation screening; and
- (d) Is approved by the Secretary of State or designee.

§ 102–42.150 What happens to proceeds from sales?

The proceeds from the sale of foreign gifts or decorations must be deposited in the Treasury as miscellaneous receipts, unless otherwise authorized.

§ 102–42.155 Can foreign gifts or decorations be destroyed?

Yes, foreign gifts or decorations that are not sold under this part may be destroyed and disposed of as scrap or for their material content under part 101–45 of this title.

Dated: July 13, 2000.

David J. Barram,

Administrator of General Services.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. 071800B]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest for Quarter 3 period.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the Quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in the northeast region for the remainder of the 2000 Quarter 3 quota period (through September 30, 2000). Regulations governing the black sea bass fishery require publication of this notice to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3' N. lat.

DATES: Effective July 25, 2000, 0001 hrs, local time, through September 30, 2000, 2400 hrs, local time.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281–9226.

SUPPLEMENTARY INFORMATION: Regulations governing the black sea bass fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is allocated into four quota periods based upon percentages of the annual quota. The Quarter 3 commercial quota (July through September) is distributed to the coastal states from Maine through North Carolina. The process to set the annual commercial quota is described in § 648.140.

The initial total commercial quota for black sea bass for the 2000 calendar year was set equal to 3,024,742 lb (1,372,000 kg) (65 FR 33486, May 24, 2000). The Quarter 3 period quota, which is equal to 12.33 percent of the annual commercial quota, was set at 372,951 lb (169,168 kg). The quota allocation was adjusted downward to compensate for