

National Aeronautics and Space Administration

Office of Infrastructure
Washington, DC 20546-0001



Space Shuttle Transition Working Group

Personal Property Scrap & Sales Proceeds Retention

Preparation:
Logistics Management Division, HQ LMD
07/01/2009
Final

White Paper

Personal Property Scrap & Sales Proceeds Retention

Purpose:

The objective of this paper is to clarify and disseminate plans to use exchange/sale proceeds from Space Shuttle Program (SSP) property (not designated for donation) to replace property for the Constellation Program.

Requirements:

1. 40 U.S.C, Subtitle I, Chapter 5, Subchapter I, Section 503, *Exchange or sale of similar items.*
2. Federal Management Regulations (FMR) 102-39, *Replacement of personal property pursuant to the exchange/sale authority.*

Background:

The Space Shuttle Program (SSP) is currently scheduled to fly its last mission in 2010. As part of the transition from the Space Shuttle Program to the Constellation Program, tangible assets including personal property and operating materials and supplies associated with the Shuttle Program will require disposition through transfer, sale, scrap, abandonment, or destruction.

It is NASA's intent to offer excess SSP property for reuse or available for acquisition through exchange sale. For items considered of historic value as artifacts, the property will be offered for reuse by other Federal agencies, for museum display (under State sponsorship) and for training at universities and schools under the provisions of the Stevenson-Wydler Act. As artifacts, the integrity of the item will remain intact as much as practicable, with minimal alteration to accommodate safety concerns, and property title will be conditionally transferred stipulating that the recipient observe special handling instructions required by export control regulations. NASA, the Logistics Management Division (LMD), has developed a prescreening process to provide for equitable and accountable donation of artifacts.

If property is placed into the prescreening process it will be intact. If donated, the property will remain intact for as long as the item remains on display, in training, or in reuse. If the item is not selected or donated or is no longer desired as an artifact, its final disposition options are exchange sale in either an intact condition or as scrap. NASA's objective is to direct revenue earned from the exchange sale of all SSP property to the Constellation program. However, there are two points to address:

- According to the Federal Management Regulations (FMR), scrap material cannot be considered for exchange sale, except in the case of scrap gold for fine gold¹.

¹ Federal Management Regulations (FMR) 102-39.45 (e) has a prohibition that scrap "*material not to be considered for exchange/sale, except in the case of scrap gold for fine gold.*"

- Is SSP property sufficiently similar to Constellation property to meet the allowance of retaining and/or redirecting SSP exchange sale revenue to Constellation property acquisition accounts?

Discussion:

Can SSP personal property which will eventually be coded and treated as scrap be exempted from the restriction that only scrap gold can be exchanged for fine gold?

Yes. LMD understands that property which is designated as scrap material in the initial phase of the disposition process would not be eligible for exchange/sale. Scrap material can never be purchased with the proceeds from the sale of dispositioned scrap material. However, the FMR does not address the situation where property (no longer of use) is reported as exchange/sale to General Services Administration (GSA), and later due to export controls restrictions, environmental requirements, or the property failed to sell, had to be disposed of by the holding agency through a scrap term contract.

It is LMD opinion, when property is legitimately reported to GSA as exchange/sale (not in a scrap condition code) and is later disposed of by the holding agency through a term scrap contract, the resulting sale proceeds should be credited to the agency's exchange/sale financial account instead of crediting a recycle program account.

GSA has addressed this issue in message response to a NASA inquiry on the matter. The assessment of GSA property management and their legal staff is; yes, NASA will be able to use proceeds from the sale of shuttle assets and shuttle property which had to be disposed of through a scrap term contract to acquire replacement assets for the Constellation program². GSA's interpretation, seconded by their attorney, is that there is nothing in law which would prohibit this type of transaction, as long as the assets being sold/exchanged did not initially enter the disposition process as "scrap" material. GSA further recommends, since this type of transaction is authorized by law (it's just the ambiguity of the regulation which is causing concern), it would be best if NASA did not label this property as "scrap" (S condition code). The property is being used by NASA until the time it's sold (to a scrap dealer possibly), it is clearly NOT scrap. GSA is currently revising the FMR to address this issue³.

Is SSP property sufficiently similar to Constellation property to meet the allowance of retaining and or redirecting SSP exchange sale revenue to Constellation property acquisition accounts?

The conditions for exchange sale are outlined in FMR 102-39, *Replacement of Personal Property Pursuant to the Exchange/Sale Authority*; "Exchange/sale" meaning to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds

² Email message from Robert Holcombe, GSA, of February 12, 2009.

³ (proposed change) § 102-39.60 What restrictions and prohibitions apply to the exchange/sale of personal property?

(e) Property with a condition code of scrap, as defined at FMR 102-36.40, except:

(1) Property that has utility and value at the point in time when a determination is made to use the exchange/sale authority; or
 (2) Scrap gold for fine gold.

of sale in whole or in part payment for the acquisition of similar property⁴. In a March 11, 2008 letter to GSA, NASA⁵ identified their intent to apply the proceeds from the sale of any Space Shuttle Program item, as a 'space launch exploration vehicle', with the acquisition of Constellation Program property which is the Shuttle replacement 'space launch exploration vehicle'. GSA was asked to clarify the exchange/sale application of 'similar property' and consider this example as meeting the intent of the exchange/sale process.

In two separate communications⁶, GSA clarified that NASAs intent to direct revenues from sale of SSP property towards acquisition of property for Constellation met the intent of the exchange/sale process outlined in the FMR. Specifically, the fourth criterion for the definition of 'similarity' addresses a situation where the acquired items and replaced items, "are designed or constructed for the same purpose (includes all forms of property regardless of the Federal Supply Group (FSG) to which they are assigned)." GSAs interpretation is based on their experience in approving exchange/sale waivers for aircraft where GSA allowed agencies, for example, to exchange/sale aircraft, associated aircraft parts, and ground handling equipment (from multiple FSGs) and acquire aircraft, associated aircraft parts, and ground handling equipment (from multiple FSGs). GSA considers NASAs initiative is analogous.

Conclusion:

Proceeds from exchange sale of SSP property sold in the original configuration or sold for its scrap value (under a scrap sale agreement/contract) can be applied towards the Constellation program.

⁴ 102.39.20 Definition of terms:

"Exchange/sale" means to exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

"Similar" means where the acquired item and replaced item:

- (1) Are identical;
- (2) Are designed and constructed for the same purpose;
- (3) Constitute parts or containers for identical or similar end items; or
- (4) Fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

⁵ Ms. Olga Dominguez, Assistant Administrator, Office of Infrastructure.

⁶ Kevin Messner, Acting Associate Administrator, GSA of April 23, 2008; and, Becky Rhodes, Deputy Associate Administrator for Travel, Transportation and Asset Management of December 22, 2008.