

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

*Revised*  
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FILE: **B-163084**

DATE: FEB 5 1979

MATTER OF:

**[Retention of Proceeds from  
Recovery of Precious Metals]**

DIGEST:

**Federal Property and Administrative Services Act of 1949 as amended and implementing regulations do not authorize U.S. Geological Survey to use proceeds from sale of silver from photographic film, aluminum from lithographic printing plates, and recycled paper to offset cost of replacing film, plates and paper, respectively. Proposed exchange is not of "similar" items as required by section 201(c) of 1949 Act. Also, regulations preclude exchange/sale of scrap or of excess property.**

**This is in response to a request from the Chief, Branch of Financial Management, United States Geological Survey, Department of the Interior, for a decision on whether the Geological Survey (USGS) has authority to use proceeds from sale of certain salvaged materials to offset the cost of replacing items which are the source of the salvage. The materials are silver from photographic film, aluminum from lithographic printing plates, and recycled paper. The USGS suggests that section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 481(c) (Supp. V 1975), the so-called exchange/sale provision, and implementing regulations of the General Services Administration (GSA) provide the necessary authority. (The submission cites earlier, similar, authorities, but 40 U.S.C. § 481(c) has generally superseded other statutory authorities for exchange/sale.)**

215  
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**Section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 481(c), authorizes the sale or exchange of "similar" items pursuant to implementing regulations. It provides:**

**"In acquiring personal property, any executive agency, under regulations to be prescribed by the Administrator [of General Services], subject to regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the**

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property acquired: Provided, That any transaction carried out under the authority of this subsection shall be evidence in writing."

The Administrator's implementing regulations governing the use of the exchange/sale authority are set forth in Federal Property Management Regulations (FPMR), 41 C.F.R., Part 101-46.

FPMR section 101-46.201 provides:

"Subject to the provisions of this Part 101-46, in acquiring replacement personal property \* \* \*, similar items may be exchanged or sold and executive agencies are authorized to apply the exchange allowance or the proceeds from sale in such cases in whole or in part payment for the replacement property acquired."

FPMR section 101-46.202 restricts and limits the exchange/sale authority, for purposes here relevant, to those cases in which (1) the items sold or exchanged are similar to the items acquired and (2) the items sold or exchanged are not excess property.

Items are deemed "similar," when "the item to be acquired is designed and constructed for the same specific purpose as the item to be replaced \* \* \*." FPMR section 101-46.202(b)(2).

In the case of the paper, it might be said that this requirement is met: used paper is proposed to be sold for new paper. However, the sale of silver, recovered from scrap film, to buy new film, or the sale of aluminum, recovered from lithographic plates, to buy new plates, is not the sale of similar items: silver is not used for the same purpose as film nor is aluminum a substitute for lithographic plates.

34 Comp. Gen. 452 (1955), cited by USGS, is distinguishable from the present case. It construes a regulation since superseded by but essentially the same as FPMR § 101-46.202(b)(4), permitting the exchange of a part of one item for a part of another item, where the parts are not necessarily similar but the items are. Materials reclaimed from scrap are not "parts" in the same sense. Moreover, the USGS proposal is, in effect, to exchange the "part" for the item, rather than, as the regulation contemplates, the part for another part.

The recovered materials are presumably "excess". Excess personal property of an agency is that property which is

B-163084

under its control but not required for its needs and the discharge of its responsibilities, as determined by the agency head. FPMR § 101-43.001-5. If the silver were not excess, there would be no reason for the agency to sell it. See 56 Comp. Gen. 754, holding that silver recovered from exposed X-ray film is excess. Excess property is specifically excluded from exchange/sale authority by FPMR § 101-46.202(a)(2).

The used paper is, by definition under FPMR 101-43.001-18, scrap, i.e., personal property that has no value except for its basic material content. FPMR § 101-46.202(d)(9) states that the exchange/sale provisions shall not be construed to authorize the "sale, transfer, or exchange of scrap materials in connection with the acquisition of personal property except in the case of scrap gold for fine gold."

In addition, items found in Federal Supply Classification Group No. 75, "Office Supplies and Services\* \* \*," are expressly ineligible for exchange/sale. FPMR § 101-46.4901. To the extent that the recycled paper falls within this group, it cannot be used for exchange/sale purposes.

USGS cites our report, "Additional Precious Metals Can Be Recovered," LCD-77-228, December 28, 1977, in support of its contention that if proceeds from sale of recovered materials could be used by the agency for purchase of replacement materials, then agencies would more aggressively recover such materials. In that report, which was limited to precious materials, we said that if the General Services Administration believes that such an incentive is necessary, it should request the necessary legislation. Thus, we recognized, at least with regard to silver recovered from film, that there is no present authority for the USGS proposal.

A program for the recovery of valuable materials is desirable and in the interest of the Government. However, under the present authorities, we see no legal basis for the application of the exchange/sale provisions which would return to USGS the proceeds gained from the sale or exchange of the items discussed herein.

*R. F. Kennedy*

Secretary **Comptroller General**  
of the United States