



## UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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OFFICE OF GENERAL COUNSEL

B-189300

Mr. Harold R. Heiser  
 Chief, Accounting Branch  
 Division of Financial Management  
 Food and Drug Administration  
 Public Health Service  
 Department of Health, Education, and  
 Welfare  
 Rockville, Maryland 20852

MAY 5 1978

Dear Mr. Heiser:

This refers to your request for an advance decision on the availability of funds expected to be realized by the sale of obsolete equipment and fixtures, for the purchase of new scientific equipment and fixtures, by the National Center for Toxicological Research (NCTR) at Pine Bluff, Arkansas. Formal decisions are generally provided only to heads of agencies or to certifying or disbursing officers who submit a voucher which they are not certain should be paid. However, perhaps the following information will be helpful.

You explain that NCTR has several idle facilities formerly used for research and development of biological warfare products, to be converted into laboratories and related space for research essential to food, drug and chemical safety. Contracts were being entered into for having two buildings stripped without cost to the Government for the salvage value and an additional \$350 to \$400 thousand dollars. NCTR wants to apply these funds to the purchase of scientific equipment for installation in the renovated facilities. The Food and Drug Administration is in accord with the use of the funds for that purpose but desires GAO confirmation on the propriety of their use.

You cite section 15.4 of title 7, GAO Policy and Procedures Manual for the Guidance of Federal Agencies, which provides that "Except as otherwise directed, all proceeds from the sale of personal property will be available \* \* \* for the purchase of replacement property." Further, the Manual provides that if the sale proceeds are not applied to replacement purchases, the proceeds will be deposited in the Treasury as miscellaneous receipts in the general fund.

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The exchange/sale authority for disposal of personal property was established by section 201(c) of the Federal Property and Administrative Services Act of 1949, 68 Stat. 354, as amended (40 U.S.C. § 481(c)), hereinafter referred to as the Property Act. Policies and methods governing the use by Federal agencies of the exchange/sale authority, pursuant to section 201(c) of the Property Act, are contained in part 101-46 of title 41 of the Code of Federal Regulations, issued by the Administrator of General Services, who is charge with administering the Act.

Section 201(c)† of the Property Act provides that in acquiring personal property, "any executive agency, under regulations to be prescribed by the Administrator, 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 property acquired: Provided, that any transaction carried out under the authority of this subsection shall be evidenced in writing." The use or applicability of the exchange/sale proceeds in any case depends upon the interpretation of the term "similar items." For more specific guidance, you should refer to 41 C.F.R. Part 101-46.† The General Services Administration (GSA) can also provide guidance on the proper use of the exchange/sale authority.

While this Office has on occasion ruled on the propriety of particular exchanges, it has done so only when asked by GSA or when GSA has agreed with the agency proposing an exchange to allow it to submit the matter to us. Generally, we would not interfere with a reasonable application by GSA of the statutory and regulatory standards. B-163084, B-186675, 17/87  
July 15, 1976.

The reference in title 7 of the GAO Manual which you cite is not substantive authority for exchange/sales, but merely sets forth the proper disposition of proceeds once such an exchange/sale, authorized under 40 U.S.C. § 481(c)† and implementing GSA regulations, has taken place. That is, in the context of 7 GAO 15.4‡ "replacement property" is regarded as personal property consisting of "similar items" under the exchange/sale authority of 40 U.S.C. § 481(c)†.

With regard to the exchange/sale of the obsolete laboratory equipment used for research and development of biological warfare products and its replacement by acquisition of equipment for research essential to food, drug and chemical safety, GSA regulations make it clear, in our view, that any authorized exchange could only be on an item by item basis, based on a determination that the replacement was to be used for the same specific purpose as the item replaced. The kind of general exchange which appears to be proposed, substituting laboratory equipment and fixtures for new laboratory equipment and fixtures would not, without a matching of old to new items, be authorized. To the extent replacement

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property acquisitions are deemed not to be "similar items," the sale proceeds must be deposited into the Treasury as miscellaneous receipts in the general fund.

Sincerely yours,

Rollee H. Efros

(Mrs.) Rollee Efros  
Assistant General Counsel

RECEIVED  
 OFFICE OF THE  
 ASSISTANT GENERAL COUNSEL

MISCELLANEOUS RECEIPTS  
 Specific account v. miscellaneous receipts  
 Proceeds from sales, etc.