

SUBJECT: Equitable Sharing of Federally Forfeited Property	PAGE <u> 1 </u> OF <u> 5 </u>
	NUMBER: 100-APA-30
RULE/CODE REFERENCE: ORC 5120.70; AR 5120-9-62	SUPERSEDES: 100-APA-30 dated 06/12/17
RELATED ACA STANDARDS:	EFFECTIVE DATE: April 9, 2018
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

Equitable sharing of federally forfeited assets will foster law enforcement cooperation with the federal government and provide additional resources for the law enforcement efforts of the Ohio Department of Rehabilitation and Correction (DRC).

III. APPLICABILITY

The policy applies to all employees and agents of the Ohio Department of Rehabilitation and Correction (DRC) participating with federal agencies and task forces in the investigation and apprehension of offenders under the control or supervision of the DRC.

IV. DEFINITIONS

DAG-71 - An application form of the U.S. Department of Justice for the transfer of federally forfeited property.

Equitable Sharing Account - A separate revenue account exclusively for the proceeds from the disposition of federally forfeited property.

Federal Annual Certification Report - An annual accounting report submitted by a state or local law enforcement agency to the U.S. Department of Justice and the U.S. Department of Treasury.

Federal Equitable Sharing Agreement - An agreement between a state or local law enforcement agency and the U.S. Department of Justice and the U.S. Department of Treasury as outlined in the “Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies” issued by the Executive Office for Asset Forfeiture, United States Department of Justice and the United States Attorney General. The agreement sets forth the requirements for participation in the federal equitable sharing program and the restrictions upon the use of federally forfeited cash, property, proceeds, and any interest earned thereon, which are equitably-shared.

Federally Forfeited Property - Federally forfeited cash, property, the proceeds of federally forfeited property, and any interest earned on the equitable sharing account, which the federal government equitably shares with the DRC.

Law Enforcement - The detection and punishment of violations of state and federal criminal law.

Luxury Vehicle - A vehicle appraised at \$50,000 or more.

Proceeds of Federally Forfeited Property - Any payment in cash or in kind made to the DRC for the sale or transfer of federally forfeited property.

Tangible Asset - An asset other than real property, money, or interest.

V. **POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to establish standards for the participation in the Federal Equitable Sharing Program. Federally Forfeited Property and the Proceeds of Federally Forfeited Property shall be used only for Law Enforcement purposes and as a supplement to existing resources and revenue appropriated by the Ohio General Assembly. Internal controls and auditing mechanisms shall account for the expenditure, transfer, or use of Federally Forfeited Property or the Proceeds of Federally Forfeited Property. All employees and agents of the DRC shall abide by the “Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies” issued by the Executive Office for Asset Forfeiture, U.S. Department of Justice and the U.S. Attorney General, on the expenditure, transfer, or use of Federally Forfeited Property or the Proceeds of Federally Forfeited Property.

VI. **PROCEDURES**

A. **Federal Equitable Sharing Agreement**

1. A Federal Equitable Sharing Agreement shall be submitted triennially to the U.S. Department of Justice and the U.S. Department of Treasury.
2. A copy of the Equitable Sharing Agreement shall be forwarded to the U.S. Attorney in Columbus, Ohio.

B. Application for the Transfer of Federally Forfeited Property

1. When the DRC is entitled to participate in the Federal Equitable Sharing Program, an employee or agent may prepare a DAG-71. A separate DAG-71 must be completed for each asset to be requested. The federal deadline for submission of a DAG-71 is sixty (60) days from the date that the federal government seized the asset.
2. The employee or agent shall submit the completed DAG-71 to the APA superintendent who shall consult with the Division of Legal Services chief counsel or designee. The Division of Legal Services chief counsel or designee shall review the DAG-71 for compliance with federal law. If the DAG-71 is in compliance, then the chief counsel or designee and the APA superintendent shall sign the DAG-71 and forward it to the Director for approval. Upon receipt of the signed DAG-71, the employee or agent shall then forward the DAG-71 to the relevant field office of the lead federal investigative agency that made the seizure.
3. Approval will not be granted for a request to transfer the following:
 - a. Real property;
 - b. Luxury Vehicles, unless a clear and definite undercover Law Enforcement need is demonstrated;
 - c. Tangible Assets for which the DRC would have to reimburse the federal government for its costs or share;
 - d. Tangible Assets that would cause the DRC to incur costs that outweigh the benefits of the asset; and
 - e. Any property through the DRC to an outside law enforcement agency.

C. Expenditure, Use, or Transfer

1. The Director must authorize all uses, expenditures and transfers of Federally Forfeited Property or the Proceeds of Federally Forfeited Property. Federally Forfeited Property must be used for the specific intended Law Enforcement use stated on the DAG-71. The Proceeds of Federally Forfeited Property must be used for a Law Enforcement purpose in accordance with the "Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies" issued by the Executive Office for Asset Forfeiture, U.S. Department of Justice and the U.S. Attorney General. Federally Forfeited Property or the Proceeds of Federally Forfeited Property must supplement and not supplant existing resources or revenues appropriated by the Ohio General Assembly.
2. The Director must authorize the expenditure or transfer of the interest generated on the Equitable Sharing Revenue Account. Interest must be used for only a Law Enforcement purpose in accordance with the "Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies" issued by the Executive Office for Asset Forfeiture, U.S. Department of Justice and the U.S. Attorney General. The expenditure or transfer of interest must supplement and not supplant existing resources or revenues appropriated by the Ohio General Assembly.

3. Purchase orders must be issued to formally disburse deposited assets from the Forfeiture Revenue Account.

D. Sale or Transfer of Tangible Federally Forfeited Property

1. Tangible Assets must be used for two (2) years from the date of transfer in accordance with the Law Enforcement purpose stated on the DAG-71, unless the asset becomes unsuitable for the Law Enforcement purpose.
2. Upon expiration of the two (2) year period, the Director may authorize the sale of the asset for payment in cash or in kind in accordance with the law. Cash proceeds shall be deposited into the Equitable Sharing Revenue Account. All proceeds from the sale are subject to the limitations on expenditure, use, or transfer set forth in this policy.
3. When a Tangible Asset is seized or forfeited by the federal government with the assistance of the APA officers on a task force, the case agency (Federal Bureau of Investigation) Federal government and the U.S Authority General Office shall sell for payment in cash or in-kind in accordance with the law. Cash proceeds shall be managed by the deputy director of the Office of Administration (OOA) and be deposited into the Equitable Sharing Revenue Account. All proceeds from the sale are subject to the limitations on expenditure, use, or transfer set forth in this policy.

E. Internal Accounting and Controls

1. The deputy director of the Office of Administration (OOA) shall:
 - a. Establish a separate Equitable Sharing Revenue Account for equitably shared money and the interest earned thereon;
 - b. Maintain copies of all DAG-71 forms submitted to the federal government and a consecutive numbering log of the copies including identifiers for the type of asset (property or currency), the amount, the share requested, the amount received, and the date received;
 - c. Submit annually the Annual Certification Report to the U.S. Department of Justice and the U.S. Department of Treasury and a copy to the U.S. Attorney in Columbus, Ohio within sixty (60) days of the close of the fiscal year;
 - d. Implement auditing procedures that will trace assets and interest to the Equitable Sharing Revenue Account; and
 - e. Secure checks from the federal government payable to the DRC and deposit them with a restrictive endorsement into the Equitable Sharing Revenue Account within one (1) business day.

2. The deputy director of the Office of Administration shall request an independent financial audit at the end of any fiscal year during which the DRC received Federally Forfeited Property with a fair market value greater than \$100,000 or the Equitable Sharing Revenue Account balance exceeded \$100,000. The independent financial auditor shall follow the Government Auditing Standards issued by the U.S. General Accounting Office. The independent financial audit report must be sent to the Executive Office for Asset forfeiture of the U.S. Department of Justice. If the DRC received a transfer from the U.S. Department of Treasury during the fiscal year, a copy of the audit report must be sent to the U.S. Department of Treasury's Executive Office for Asset Forfeiture.
3. The Director may authorize the expenditure of funds from the Equitable Sharing Revenue Account to pay for the costs of auditing and bookkeeping resulting from the equitable sharing of Federally Forfeited Property.