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Subtitle C—Federal Property Management Regulations System (Continued)

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

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SUBCHAPTER A—GENERAL

PART 102—GENERAL [RESERVED]

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 39085, July 21, 1999, unless otherwise noted.

Subpart A—Regulation System

GENERAL

§ 102–2.5 What is the Federal Management Regulation (FMR)?

The Federal Management Regulation (FMR) is the successor regulation to the Federal Property Management Regulations (FPMR). It contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that described how to do business with the General Services Administration (GSA). ''How to'' materials on this and other subjects are available in customer service guides, handbooks, brochures and Internet websites provided by GSA. (See § 102–2.125.)

§ 102–2.10 What is the FMR's purpose?

The FMR prescribes policies concerning property management and related administrative activities. GSA issues the FMR to carry out the Administrator of General Services' functional responsibilities, as established by statutes, Executive orders, Presidential memoranda, Circulars and bulletins issued by the Office of Management and Budget (OMB), and other policy directives.

§ 102–2.15 What is the authority for the FMR system?

The Administrator of General Services prescribes and issues the FMR under the authority of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 486(c), as well as other applicable Federal laws and authorities.

§ 102–2.20 Which agencies are subject to the FMR?

The FMR applies to executive agencies unless otherwise extended to Federal agencies in various parts of this chapter. The difference between the two terms is that Federal agencies include executive agencies plus establishments in the legislative or judicial branch of the Government. See paragraphs (a) and (b) of this section for the definitions of each term.

(a) *What is an executive agency?* An executive agency is any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation. (See 40 U.S.C. 472(a).)

(b) *What is a Federal agency?* A Federal agency is any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under that person's direction). (See 40 U.S.C. 472(b).)

§ 102–2.25 When are other agencies involved in developing the FMR?

Normally, GSA will ask agencies to collaborate in developing parts of the FMR.

§ 102–2.30 Where and in what formats is the FMR published?

Proposed rules are published in the FEDERAL REGISTER. FMR bulletins are published in looseleaf format. FMR interim and final rules are published in the following formats—

(a) FEDERAL REGISTER under the ''Rules and Regulations'' section.

(b) Loose-leaf. (See § 102–2.35.)

(c) Code of Federal Regulations (CFR), which is an annual codification of the general and permanent rules published in the FEDERAL REGISTER. The CFR is available on line and in a bound-volume format.

(d) Electronically on the Internet.

§ 102–2.35 How is the FMR distributed?

(a) A liaison appointed by each agency provides GSA with their agency's distribution requirements of the looseleaf version of the FMR. Agencies must submit GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances, to—General Services Administration, Office of Communications (X), 1800 F Street, NW, Washington, DC 20405.

(b) Order FEDERAL REGISTER and Code of Federal Regulations copies of FMR material through your agency's authorizing officer.

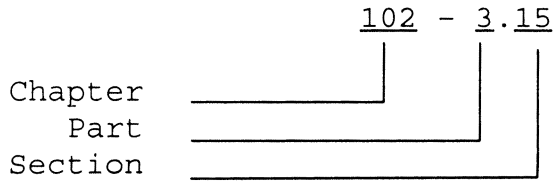
§ 102–2.40 May an agency issue implementing and supplementing regulations for the FMR?

Yes, an agency may issue implementing regulations (see § 102–2.50) to expand upon related FMR material and supplementing regulations (see § 102–2.55) to address subject material not covered in the FMR. The Office of the Federal Register assigns chapters in Title 41 of the Code of Federal Regulations for agency publication of implementing and supplementing regulations.

NUMBERING

§ 102–2.45 How is the FMR numbered?

(a) All FMR sections are designated by three numbers. The following example illustrates the chapter (it's always 102), part, and section designations:



(b) In the looseleaf version, the month, year, and number of FMR amendments appear at the bottom of each page.

§ 102–2.50 How do I number my agency's implementing regulations?

The first three-digit number represents the chapter number assigned to your agency in Title 41 of the CFR. The part and section numbers correspond to FMR material. For example, if your agency is assigned Chapter 130 in Title 41 of the CFR and you are implementing § 102–2.60 of the FMR, your implementing section would be numbered § 130–2.60.

§ 102–2.55 How do I number my agency's supplementing regulations?

Since there is no corresponding FMR material, number the supplementing material ''601'' or higher. For example, your agency's supplementing regulations governing special services to states might start with § 130–601.5.

DEVIATIONS

§ 102–2.60 What is a deviation from the FMR?

A deviation from the FMR is an agency action or policy that is inconsistent with the regulation. (The deviation policy for the FPMR is in 41 CFR part 101–1.)

§ 102–2.65 When may agencies deviate from the FMR?

Because, it consists primarily of set policies and mandatory requirements, deviation from the FMR should occur infrequently. However, to address unique circumstances or to test the effectiveness of potential policy changes, agencies may be able to deviate from the FMR after following the steps described in § 102–2.80.

§ 102–2.70 What are individual and class deviations?

An individual deviation is intended to affect only one action. A class deviation is intended to affect more than one action (e.g., multiple actions, the actions of more than one agency, or individual agency actions that are expected to recur).

§ 102–2.75 What timeframes apply to deviations?

Timeframes vary based on the nature of the deviation. However, deviations cannot be open-ended. When consulting with GSA about using an individual or class deviation, you must set a timeframe for the deviation's duration.

§ 102–2.80 What steps must an agency take to deviate from the FMR?

(a) Consult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them. The consultation process may also highlight reasons why an agency would not be permitted to deviate from the FMR; e.g., statutory constraints.

(b) Formally request a deviation, if consultations indicate that your agency needs one. The head of your agency or a designated official should write to GSA's Regulatory Secretariat to the attention of a GSA official in the program office that is likely to consider the deviation. (See the FMR bulletin that lists contacts in GSA's program offices and § 102–2.90.) The written request must fully explain the reasons for the deviation, including the benefits that the agency expects to achieve.

§ 102–2.85 What are the reasons for writing to GSA about FMR deviations?

The reasons for writing are to:

(a) Explain your agency's rationale for the deviation. Before it can adequately comment on a potential deviation from the FMR, GSA must know why it is needed. GSA will compare your need against the applicable policies and regulations.

(b) Obtain clarification from GSA as to whether statutes, Executive orders, or other controlling policies, which may not be evident in the regulation, preclude deviating from the FMR for the reasons stated.

(c) Establish a timeframe for using a deviation.

(d) Identify potential changes to the FMR.

(e) Identify the benefits and other results that the agency expects to achieve.

§ 102–2.90 Where should my agency send its correspondence on an FMR deviation?

Send correspondence to: General Services Administration, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, 1800 F Street, NW, Washington, DC 20405.

§ 102–2.95 What information must agencies include in their deviation letters to GSA?

Agencies must include:

(a) The title and citation of the FMR provision from which the agency wishes to deviate;

(b) The name and telephone number of an agency contact who can discuss the reason for the deviation;

(c) The reason for the deviation;

(d) A statement about the expected benefits of using the deviation (to the extent possible, expected benefits should be stated in measurable terms);

(e) A statement about possible use of the deviation in other agencies or Governmentwide; and

(f) The duration of the deviation.

§ 102–2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?

Yes, agencies that deviate from the FMR must also write to the relevant GSA program office at the Regulatory Secretariat's address (see § 102–2.90) to describe their experiences in using a deviation.

§ 102–2.105 What information must agencies include in their follow-up analysis?

In your follow-up analysis, provide information that may include, but should not be limited to, specific actions taken or not taken as a result of the deviation, outcomes, impacts, anticipated versus actual results, and the advantages and disadvantages of taking an alternative course of action.

§ 102–2.110 When must agencies provide their follow-up letters?

(a) For an individual deviation, once the action is complete.

(b) For a class deviation, at the end of each twelve-month period from the time you first took the deviation and at the end of the deviation period.

NON-REGULATORY MATERIAL

§ 102–2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

As GSA converts the FPMR to the FMR, non-regulatory materials in the FPMR, such as guidance, procedures, standards, and information, that describe how to do business with GSA, will become available in separate documents. These documents may include customer service guides, handbooks, brochures, Internet websites, and FMR bulletins. GSA will eliminate non-regulatory material that is no longer needed.

§ 102–2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?

Periodically, GSA will issue for your reference an FMR bulletin that lists program contacts with whom agencies can discuss regulatory requirements. At a minimum, the list will contain organization names and telephone numbers for each program addressed in the FMR.

§ 102–2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

The FMR establishes policy; it does not specify procedures for the acquisition of GSA services. However, as a service to users during the transition

from the FPMR to the FMR and as needed thereafter, GSA will issue FMR bulletins to identify where to find information on how to do business with GSA. References include customer service guides, handbooks, brochures, Internet websites, etc.

Subpart B—Forms

§ 102–2.130 Where are FMR forms prescribed?

In any of its parts, the FMR may prescribe forms and the requirements for using them.

§ 102–2.135 How do agencies obtain forms prescribed by the FMR?

For copies of the forms prescribed by in the FMR, do any of the following:

(a) Write to us at: General Services Administration, National Forms and Publications Center (7CPN), Warehouse 4, Dock No. 1, 501 West Felix Street, Fort Worth, TX 76115.

(b) Send e-mail messages to: NFPC@gsa-7FDepot.

(c) Visit our web site at: www.gsa.gov/forms/forms.htm.

Subpart C—Plain Language Regulatory Style

§ 102–2.140 What elements of plain language appear in the FMR?

The FMR is written in a ''plain language'' regulatory style. This style is easy to read and uses a question and answer format directed at the reader, active voice, shorter sentences, and, where appropriate, personal pronouns.

§ 102–2.145 To what do pronouns refer when used in the FMR?

Throughout its text, the FMR may contain pronouns such as, but not limited to, we, you, and I. When pronouns are used, each subchapter of the FMR will indicate whether they refer to the reader, an agency, GSA, or some other entity. In general, pronouns refer to who or what must perform a required action.

PART 102–3—ADVISORY COMMITTEE MANAGEMENT [RESERVED]

PART 102–4—NONDISCRIMINATION IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS [RESERVED]

PART 102–5—HOME-TO-WORK TRANSPORTATION

Subpart A—General

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102–5.5 Preamble.
102–5.10 What does this part cover?
102–5.15 Who is covered by this part?
102–5.20 Who is not covered by this part?
102–5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?
102–5.30 What definitions apply to this part?

Subpart B—Authorizing Home-to-Work Transportation

102–5.35 Who is authorized home-to-work transportation?
102–5.40 May the agency head delegate the authority to make home-to-work determinations?
102–5.45 Should determinations be completed before an employee is provided with home-to-work transportation?
102–5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?
102–5.55 How do we prepare determinations?
102–5.60 How long are initial determinations effective?
102–5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?
102–5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?
102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?
102–5.80 What are some examples of positions that may involve field work?
102–5.85 What information should our determination for field work include if positions are identified rather than named individuals?
102–5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?
102–5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?
102–5.100 May we use home-to-work transportation for other than official purposes?

102–5.105 May others accompany an employee using home-to-work transportation?

Subpart C—Documenting and Reporting Determinations

102–5.110 Must we report our determinations outside of our agency?
102–5.115 When must we report our determinations?
102–5.120 What are our responsibilities for documenting use of home-to-work transportation?

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

SOURCE: 65 FR 54966, Sept. 12, 2000, unless otherwise noted.

Subpart A—General

§ 102–5.5 Preamble.

(a) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all to whom it applies.

(b) The terms ''we,'' ''I,'' ''our,'' ''you,'' and ''your,'' when used in this part, mean you as a Federal agency, an agency head, or an employee, as appropriate.

§ 102–5.10 What does this part cover?

This part covers the use of Government passenger carriers to transport employees between their homes and places of work.

§ 102–5.15 Who is covered by this part?

This part covers Federal agency employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

§ 102–5.20 Who is not covered by this part?

This part does not cover:

(a) Employees who are on official travel (TDY); or

(b) Employees who are on permanent change of station (PCS) travel; or

(c) Employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties when designated in writing as such by their agency head.

§ 102–5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?

Each Federal agency using Government passenger carriers to provide home-to-work transportation for employees who are essential for the safe and efficient performance of intelligence, counterintelligence, protective services, or criminal law enforcement duties should issue guidance concerning such use.

§ 102–5.30 What definitions apply to this part?

The following definitions apply to this part:

Agency head means the highest official of a Federal agency.

Clear and present danger means highly unusual circumstances that present a threat to the physical safety of the employee or their property when the danger is:

(1) Real; and

(2) Immediate or imminent, not merely potential; and

(3) The use of a Government passenger carrier would provide protection not otherwise available.

Compelling operational considerations means those circumstances where home-to-work transportation is essential to the conduct of official business or would substantially increase a Federal agency's efficiency and economy.

Emergency means circumstances that exist whenever there is an immediate, unforeseeable, temporary need to provide home-to-work transportation for those employees necessary to the uninterrupted performance of the agency's mission. (An emergency may occur where there is a major disruption of available means of transportation to or from a work site, an essential Government service must be provided, and there is no other way to transport those employees.)

Employee means a Federal officer or employee of a Federal agency, including an officer or enlisted member of the Armed Forces.

Federal agency means:

(1) A department (as defined in section 18 of the Act of August 2, 1946 (41 U.S.C. 5a));

(2) An executive department (as defined in 5 U.S.C. 101);

(3) A military department (as defined in 5 U.S.C. 102);

(4) A Government corporation (as defined in 5 U.S.C. 103(1));

(5) A Government controlled corporation (as defined in 5 U.S.C. 103(2));

(6) A mixed-ownership Government corporation (as defined in 31 U.S.C. 9101(2));

(7) Any establishment in the executive branch of the Government (including the Executive Office of the President);

(8) Any independent regulatory agency (including an independent regulatory agency specified in 44 U.S.C. 3502(10));

(9) The Smithsonian Institution;

(10) Any nonappropriated fund instrumentality of the United States; and

(11) The United States Postal Service.

Field work means official work requiring the employee's presence at various locations other than his/her regular place of work. (Multiple stops (itinerant-type travel) within the accepted local commuting area, limited use beyond the local commuting area, or transportation to remote locations that are only accessible by Government-provided transportation are examples of field work.)

Home means the primary place where an employee resides and from which the employee commutes to his/her place of work.

Home-to-work transportation means the use of a Government passenger carrier to transport an employee between his/her home and place of work.

Passenger carrier means a motor vehicle, aircraft, boat, ship, or other similar means of transportation that is owned (including those that have come into the possession of the Government by forfeiture or donation), leased, or rented (non-TDY) by the United States Government.

Work means any place within the accepted commuting area, as determined by the Federal agency for the locality involved, where an employee performs his/her official duties.

Subpart B—Authorizing Home-to-Work Transportation

§ 102–5.35 Who is authorized home-to-work transportation?

By statute, certain Federal officials are authorized home-to-work transportation, as are employees who meet certain statutory criteria as determined by their agency head. The Federal officials authorized by statute are the President, the Vice-President, and other principal Federal officials and their designees, as provided in 31 U.S.C. 1344(b)(1) through (b)(7). Those employees engaged in field work, or faced with a clear and present danger, an emergency, or a compelling operational consideration may be authorized home-to-work transportation as determined by their agency head. No other employees are authorized home-to-work transportation.

§ 102–5.40 May the agency head delegate the authority to make home-to-work determinations?

No, the agency head may not delegate the authority to make home-to-work determinations.

§ 102–5.45 Should determinations be completed before an employee is provided with home-to-work transportation?

Yes, determinations should be completed before an employee is provided with home-to-work transportation unless it is impracticable to do so.

§ 102–5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?

Yes, determinations may be made in advance when the Federal agency wants to have employees ready to respond to:

(a) A clear and present danger;

(b) An emergency; or

(c) A compelling operational consideration.

NOTE TO § 102–5.50: Implementation of these determinations is contingent upon one of the three circumstances occurring. Thus, these may be referred to as ''contingency determinations.''

§ 102–5.55 How do we prepare determinations?

Determinations must be in writing and include the:

(a) Name and title of the employee (or other identification, if confidential);

(b) Reason for authorizing home-to-work transportation; and

(c) Anticipated duration of the authorization.

§ 102–5.60 How long are initial determinations effective?

Initial determinations are effective for no longer than:

(a) Two years for field work, updated as necessary; and

(b) Fifteen days for other circumstances.

§ 102–5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?

The agency head may approve unlimited subsequent determinations, when the need for home-to-work transportation exceeds the initial period, for no longer than:

(a) Two years each for field work, updated as necessary; and

(b) Ninety calendar days each for other circumstances.

§ 102–5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?

Agencies should consider the following when making a determination to authorize home-to-work transportation for field work:

(a) The location of the employee's home in proximity to his/her work and to the locations where non-TDY travel is required; and

(b) The use of home-to-work transportation for field work should be authorized only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

§ 102–5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?

The following circumstances do not establish a basis for authorizing home-to-work transportation for field work:

(a) When an employee assigned to field work is not actually performing field work.

(b) When the employee's workday begins at his/her work; or

(c) When the employee normally commutes to a fixed location, however far removed from his/her official duty station (for example, auditors or investigators assigned to a defense contractor plant).

NOTE TO § 102–5.75: For instances where an employee is authorized home-to-work transportation under the field work provision, but performs field work only on an intermittent basis, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed. Although some employees' daily work station is not located in a Government office, these employees are not performing field work. Like all Government employees, employees working in a ''field office'' are responsible for their own commuting costs.

§ 102–5.80 What are some examples of positions that may involve field work?

Examples of positions that may involve field work include, but are not limited to:

(a) Quality assurance inspectors;

(b) Construction inspectors;

(c) Dairy inspectors;

(d) Mine inspectors;

(e) Meat inspectors; and

(f) Medical officers on outpatient service.

NOTE TO § 102–5.80: The assignment of an employee to such a position does not, of itself, entitle an employee to receive daily home-to-work transportation.

§ 102–5.85 What information should our determination for field work include if positions are identified rather than named individuals?

If positions are identified rather than named individuals, your determination for field work should include sufficient

information to satisfy an audit, if necessary. This information should include the job title, number, and operational level where the work is to be performed (e.g., five recruiter personnel or, positions at the Detroit Army Recruiting Battalion).

NOTE TO §102–5.85: An agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs.

§ 102–5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?

Yes, situations may arise where, for cost or other reasons, it is in the Government's interest to base a Government passenger carrier at a Government facility located near the employee's home or work rather than authorize the employee home-to-work transportation.

§ 102–5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?

No, the comfort and/or convenience of an employee is not considered sufficient justification to authorize home-to-work transportation.

§ 102–5.100 May we use home-to-work transportation for other than official purposes?

No, you may not use home-to-work transportation for other than official purposes. However, if your agency has prescribed rules for the incidental use of Government vehicles (as provided in 31 U.S.C. note), you may use the vehicle in accordance with those rules in connection with an existing home-to-work authorization.

§ 102–5.105 May others accompany an employee using home-to-work transportation?

Yes, an employee authorized home-to-work transportation may share space in a Government passenger carrier with other individuals, provided that the passenger carrier does not travel additional distances as a result and such sharing is consistent with his/her Federal agency's policy. When a Federal agency establishes its space sharing policy, the Federal agency should consider its potential liability for and to those individuals. Home-to-work transportation does not extend to the employee's spouse, other relatives, or friends unless they travel with the employee from the same point of departure to the same destination, and this use is consistent with the Federal agency's policy.

Subpart C—Documenting and Reporting Determinations

§ 102–5.110 Must we report our determinations outside of our agency?

Yes, you must submit your determinations to the following Congressional Committees:

(a) Chairman, Committee on Governmental Affairs, United States Senate, Suite SD–340, Dirksen Senate Office Building, Washington, DC 20510–6250; and

(b) Chairman, Committee on Governmental Reform, United States House of Representatives, Suite 2157, Rayburn House Office Building, Washington, DC 20515–6143.

§ 102–5.115 When must we report our determinations?

You must report your determinations to Congress no later than 60 calendar days after approval. You may consolidate any subsequent determinations into a single report and submit them quarterly.

§ 102–5.120 What are our responsibilities for documenting use of home-to-work transportation?

Your responsibilities for documenting use of home-to-work transportation are that you must maintain logs or other records necessary to verify that any home-to-work transportation was for official purposes. Each agency may decide the organizational level at which the logs should be maintained and kept. The logs or other records should be easily accessible for audit and should contain:

(a) Name and title of employee (or other identification, if confidential) using the passenger carrier;

(b) Name and title of person authorizing use;

(c) Passenger carrier identification;

(d) Date(s) home-to-work transportation is authorized;

(e) Location of residence;

(f) Duration; and

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§ 102–34.5 Preamble.

(a) This part governs the economical and efficient management and control of motor vehicles that the Government owns or leases. Agencies will incorporate appropriate provisions of this part into contracts offering Government-furnished equipment in order to ensure adequate control over the use of motor vehicles.

(b) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all executive agencies.

(c) The terms ''we,'' ''I,'' ''our,'' ''you,'' and ''your,'' when used in this part, mean you as an executive agency, as your agency's fleet manager, or as a motor vehicle user or operator, as appropriate.

§ 102–34.10 What definitions apply to motor vehicle management?

The following definitions apply to motor vehicle management:

Commercial design motor vehicle means a motor vehicle procurable from regular production lines and designed for use by the general public.

Domestic fleet (see § 102–34.20(a)).

Foreign fleet (see § 102–34.20(b)).

GSA Fleet lease (see § 102–34.25(d)).

Large fleet (see § 102–34.20(d)).

Law enforcement motor vehicle means a passenger automobile or light truck that is specifically approved in an agency's appropriation act for use in apprehension, surveillance, police or other law enforcement work or specifically designed for use in law enforcement. If not identified in an agency's appropriation language, a motor vehicle qualifies as a law enforcement motor vehicle only in the following cases:

(1) A passenger automobile having heavy duty components for electrical, cooling and suspension systems and at least the next higher cubic inch displacement or more powerful engine than is standard for the automobile concerned.

(2) A light truck having emergency warning lights and identified with markings such as ''police.''

(3) An unmarked motor vehicle certified by the agency head as essential for the safe and efficient performance of intelligence, counterintelligence, protective, or other law enforcement duties.

(4) A motor vehicle seized by a Federal agency that is subsequently used for the purpose of performing law enforcement activities.

Light duty motor vehicle means any motor vehicle with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Light truck means a motor vehicle on a truck chassis with a gross motor vehicle weight rating (GVWR) of 8,500 pounds or less.

Military design motor vehicle means a motor vehicle (excluding general-purpose motor vehicles) designed according to military specifications to support directly combat or tactical operations or training for such operations.

Motor vehicle means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a military design motor vehicle or vehicles not covered by this part (see § 102–34.15).

Motor vehicle identification (also referred to as ''motor vehicle markings'') means the legends ''For Official Use Only'' and ''U.S. Government'' placed on a motor vehicle plus other legends showing the full name of the department, agency, establishment, corporation, or service by which the motor vehicle is used. This identification is usually a decal placed in the rear window or on the side of the motor vehicle.

Motor vehicle lease (see § 102–34.25(b)).

Motor vehicle markings (see ''Motor vehicle identification'' in this section).

Motor vehicle purchase (see § 102–34.25(a)).

Motor vehicle rental (see § 102–34.25(c)).

Motor vehicles transferred from excess (see § 102–34.25(e)).

Owning agency means the executive agency that holds the vehicle title, manufacturer's Certificate of Origin, or is the lessee of a motor vehicle lease. This term does not apply to agencies that lease motor vehicles from the GSA Fleet.

Passenger automobile means a sedan or station wagon designed primarily to transport people.

Reportable motor vehicles are vehicles which are reported to GSA as outlined in Subpart I of this part:

(1) Included are sedans, station wagons, buses, ambulances, vans, utility motor vehicles, trucks and truck tractors, regardless of fuel type.

(2) Excluded are fire trucks, motorcycles, military-design motor vehicles, semi-trailers, trailers and other trailing equipment such as pole trailers, dollies, cable reels, trailer coaches and bogies, and trucks with permanently mounted equipment such as generators and air compressors.

Small fleet (see § 102–34.20(c)).

Using agency means a Federal agency that obtains motor vehicles from the GSA Fleet, commercial firms or another Federal agency and does not hold the vehicle title or manufacturer's Certificate of Origin. However, this does not include a Federal agency that obtains a motor vehicle by motor vehicle rental.

§ 102–34.15 What motor vehicles are not covered by this part?

Motor vehicles not covered are:

(a) Designed or used for military field training, combat, or tactical purposes;

(b) Used principally within the confines of a regularly established military post, camp, or depot; or

(c) Used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of such agency determines that exclusive control of such vehicle is essential to the effective performance of such duties, although such vehicles are subject to subpart C and subpart I of this part.

§ 102–34.20 What types of motor vehicle fleets are there?

The types of motor vehicle fleets are:

(a) *Domestic fleet* means all reportable agency-owned motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(b) *Foreign fleet* means all reportable agency-owned motor vehicles operated in areas outside any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(c) *Small fleet* means a fleet of fewer than 2,000 reportable agency-owned motor vehicles, worldwide.

(d) *Large fleet* means a fleet of 2,000 or more reportable agency-owned motor vehicles, worldwide.

§ 102–34.25 What sources of supply are available for obtaining motor vehicles?

The following sources of supply are available:

(a) *Motor vehicle purchase* means buying a motor vehicle from a commercial source, usually a motor vehicle manufacturer or a motor vehicle manufacturer's dealership.

(b) *Motor vehicle lease* means obtaining a motor vehicle by contract or other arrangement from a commercial source for 60 continuous days or more.

(c) *Motor vehicle rental* means obtaining a motor vehicle by contract or other arrangement from a commercial source for less than 60 continuous days.

(d) *GSA Fleet lease* means obtaining a motor vehicle from the General Services Administration (GSA Fleet). Where ''lease'' is used alone within this part, it refers to ''motor vehicle lease'' in paragraph (b) of this section and not GSA Fleet lease.

(e) *Motor vehicles transferred from excess* means obtaining a motor vehicle reported as excess and transferred with or without cost.

Subpart A—Obtaining Fuel Efficient Motor Vehicles

§ 102–34.30 Who must comply with motor vehicle fuel efficiency requirements?

Executive agencies located in any State, Commonwealth, territory or possession of the United States, and the District of Columbia which operate motor vehicles owned or leased by the Government in the conduct of official business. This subpart does not apply to motor vehicles exempted by law or other regulations, such as law enforcement and motor vehicles in foreign areas. Other Federal agencies are encouraged to comply so that maximum energy conservation benefits may be realized in obtaining, operating, and managing motor vehicles owned or leased by the Government.

§ 102–34.35 What are the procedures for purchasing and leasing motor vehicles?

Procedures for purchasing and leasing motor vehicles can be found in subpart 101–26.5 of this title.

§ 102–34.40 How are passenger automobiles classified?

Passenger automobiles are classified in the following table:

Sedan class	Station wagon class	Descriptive name
I	I	Subcompact.
II	II	Compact.

Sedan class	Station wagon class	Descriptive name
III	III	Midsize
IV	IV	Large.
V		Limousine.

§ 102–34.45 What size motor vehicles may we purchase and lease?

(a) You must select motor vehicles to achieve maximum fuel efficiency.

(b) Limit motor vehicle body size, engine size and optional equipment to what is essential to meet your agency's mission.

(c) With the exception of motor vehicles used by the President and Vice President and motor vehicles for security and highly essential needs, you must purchase and lease midsize (class III) or smaller sedans.

(d) Purchase and lease large (class IV) sedans only when such motor vehicles are essential to your agency's mission.

§ 102–34.50 What are fleet average fuel economy standards?

(a) The minimum miles per gallon that a fleet of motor vehicles purchased or leased by an executive agency must obtain. The need to meet these standards is set forth in 49 U.S.C. 32917, Standards for Executive Agency Automobiles, and Executive Order 12375, Motor Vehicles. These standards have two categories:

(1) Average fuel economy standard for all passenger automobiles.

(2) Average fuel economy standard for light trucks.

(b) These standards do not apply to passenger automobiles and light trucks designed to perform combat-related missions for the U.S. Armed Forces or motor vehicles designed for use in law enforcement or emergency rescue work.

§ 102–34.55 What are the minimum fleet average fuel economy standards?

The minimum fleet average fuel economy standards appear in the following table:

FLEET AVERAGE FUEL ECONOMY STANDARDS [A]

Fiscal year	Passsenger automobile [1]	Light truck [2]
1995	27.5	20.6 [3]
1996	27.5	20.7 [3]
1997	27.5	20.7 [3]
1998	27.5	20.7 [3]
1999	27.5	20.7 [3]
2000 & beyond	27.5	([4])

[a] These figures represent miles/gallon.

[1] Established by section 49 U.S.C. 32902 and the Secretary of Transportation.

[2] Fleet average fuel economy standard set by the Secretary of Transportation and mandated by Executive Order 12375 beginning in fiscal year 1982.

[3] Fleet average fuel economy for light trucks is the combined fleet average fuel economy for all 4 × 2 and 4 × 4 light trucks.

[4] Requirements not yet set by the Secretary of Transportation.

§ 102–34.60 How do we calculate the average fuel economy for our fleet?

(a) Due to the variety of motor vehicle configurations, you must take an average of all motor vehicles, by category (passenger automobiles or light truck) purchased and leased by your agency during the fiscal year. This calculation is the sum of passenger automobiles or light trucks that your executive agency purchases or leases from commercial sources divided by the sum of the fractions representing the number of motor vehicles of each category by model divided by the unadjusted city/highway mile-per-gallon ratings for that model, developed by the Environmental Protection Agency (EPA) for each fiscal year. The EPA mile-per-gallon rating for each motor vehicle make, model, and model year may be obtained from the: General Services Administration, Attn: FFA, Washington, DC 20406.

(b) An example follows:

Light trucks: i. 600 light trucks acquired in a specific year. These are broken down into:

A. 200 Six cylinder automatic transmission pick-up trucks, EPA rating: 24.3 mpg, plus

B. 150 Six cylinder automatic transmission mini-vans, EPA rating 24.8 mpg, plus

C. 150 Eight cylinder automatic transmission pick-up trucks, EPA rating: 20.4 mpg, plus

D. 100 Eight cylinder automatic transmission cargo vans, EPA rating: 22.2 mpg.

$$= \frac{600}{\frac{200}{24.3} + \frac{150}{24.8} + \frac{150}{20.4} + \frac{100}{22.2}}$$

$$= \frac{600}{8.2305 + 6.0484 + 7.3530 + 4.5045}$$

$$= \frac{600}{26.1364} = 22.9565 \text{ (Rounded to nearest 0.1 mpg.)}$$

ii. Fleet average fuel economy for light trucks in this case is 23.0 mpg.

§ 102–34.65 How may we request an exemption from the fuel economy standards?

(a) You must submit your reasons for the exemption in a written request to the: Administrator of General Services, ATTN: MTV, Washington, DC 20405.

(b) GSA will review the request and advise you of the determination within 30 days of receipt. Passenger automobiles and light trucks exempted under the provisions of this section must not be included in calculating your fleet average fuel economy.

§ 102–34.70 How does GSA monitor the fuel economy of purchased and leased motor vehicles?

(a) Executive agencies report to GSA their leases and purchases of passenger automobiles and light trucks. GSA keeps a master record of the miles per gallon for passenger automobiles and light trucks acquired by each agency during the fiscal year. GSA verifies that each agency's passenger automobile and light truck leases and purchases achieve the fleet average fuel economy for the applicable fiscal year, as required by Executive Order 12375.

(b) The GSA Federal Vehicle Policy Division (MTV) issues information about the EPA miles-per-gallon ratings to executive agencies at the beginning of each fiscal year to help agencies with their acquisition plans.

§ 102–34.75 How must we report fuel economy data for passenger automobiles and light trucks we purchase or commercially lease?

(a) You must send copies or synopses of motor vehicle leases and purchases to GSA. Use the unadjusted combined city/highway mile-per-gallon ratings for passenger automobiles and light trucks developed each fiscal year by the Environmental Protection Agency (EPA). All submissions for a fiscal year must reach GSA by December 1 of the next fiscal year. Submit the information as soon as possible after the purchase or effective date of each lease to the: General Services Administration, ATTN: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*.

(b) Include in your submission to GSA motor vehicles purchased or leased by your agency for use in any State, Commonwealth, territory or possession of the United States, and the District of Columbia.

(c) Your submission to GSA must include:

(1) Number of passenger automobiles and light trucks, by category.

(2) Year.

(3) Make.

(4) Model.

(5) Transmission type (if manual, number of forward speeds).

(6) Cubic inch displacement of engine.

(7) Fuel type (i.e., gasoline, diesel, or type of alternative fuel).

(8) Monthly lease cost, if applicable.

NOTE TO § 102–34.75: Do not include passenger automobile and light truck lease renewal options as new acquisition motor vehicle leases. Do not report passenger automobiles and light trucks exempted from fleet

average fuel economy standards (see § 102–34.50(b) and § 102–34.65).

§ 102–34.80 Do we report fuel economy data for passenger automobiles and light trucks purchased for our agency by the GSA Automotive Division?

No. The GSA Automotive Division provides information for passenger automobiles and light trucks it purchases for agencies.

§ 102–34.85 Do we have to submit a negative report if we don't purchase or lease any motor vehicles in a fiscal year?

Yes, you must submit a negative report if you don't purchase or lease any motor vehicles in a fiscal year.

§ 102–34.90 Are any motor vehicles exempted from these reporting requirements?

Yes. You do not need to report passenger automobiles and light trucks that are:

(a) Purchased or leased for use outside any State, Commonwealth, territory or possession of the United States, or the District of Columbia.

(b) Designed to perform combat-related missions for the U.S. Armed Forces.

(c) Designed for use in law enforcement or emergency rescue work.

§ 102–34.95 Does fleet average fuel economy reporting affect our acquisition plan?

It may. If previous motor vehicle purchases and leases have caused your fleet to fail to meet the required fuel economy by the end of the fiscal year, GSA may encourage you to adjust future requests to meet fuel economy requirements.

§ 102–34.100 Where may we obtain help with our motor vehicle acquisition plans?

For help with your motor vehicle acquisition plan, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: vehicle.policy@gsa.gov

Subpart B—Identifying and Registering Motor Vehicles

MOTOR VEHICLE IDENTIFICATION

§ 102–34.105 What motor vehicles require motor vehicle identification?

All motor vehicles owned or leased by the Government must display motor vehicle identification unless exempted under § 102–34.180, § 102–34.195, or § 102–34.200.

§ 102–34.110 What motor vehicle identification must we put on motor vehicles we purchase or lease?

(a) For motor vehicles with rear windows, display:

(1) ''For Official Use Only,'' in letters ½ to ¾ inch high.

(2) ''U.S. Government'' in letters ¾ to 1 inch high; and

(3) The full name of the department, agency, establishment, corporation, or service owning or leasing the motor vehicle (in letters 1 to 1½ inch high), or in the alternative, a title that describes the activity in which it is operated (if the title readily identifies the department, agency, establishment, corporation, or service concerned).

(b) For other than motor vehicle rear windows, display the motor vehicle identification in paragraphs (a)(1) through (3) of this section, but:

(1) Use letters 1 to 1½ inches high in colors contrasting to the motor vehicle.

(2) If you use subsidiary words or titles of subordinate units, use letters ½ inch to ¾ inch high.

(c) The preferred material is a decal of elastomeric pigmented film type for ease of application and removal.

NOTE TO § 102–34.110: Each agency or activity is responsible for acquiring its own decals. Replace this motor vehicle identification when necessary due to damage or wear.

§ 102–34.115 What motor vehicle identification must the Department of Defense (DOD) put on motor vehicles it purchases or leases?

The following must appear on DOD purchased or leased motor vehicles:

(a) ''For Official Use Only;''

(b) An appropriate title for the DOD component; and

(c) The DOD code and registration number assigned by the DOD component accountable for the motor vehicle.

§ 102–34.120 Where is motor vehicle identification placed on purchased and leased motor vehicles?

(a) *On most motor vehicles*. On the left side of the rear window, 1½ inches or less from the bottom of the window.

(b) *On motor vehicles without rear windows or where identification on the rear window would not be easily seen*. Centered on both front doors or in any appropriate position on each side of the motor vehicle.

(c) *On trailers*. Centered on both sides of the front quarter of the trailer in a conspicuous location.

§ 102–34.125 Before we sell a motor vehicle, what motor vehicle identification or markings must we remove?

You must remove all motor vehicle identification before you transfer the title or deliver the motor vehicle.

LICENSE PLATES

§ 102–34.130 Must our motor vehicles use Government license plates?

Yes you must use Government license plates, with the exception of motor vehicles exempted under § 102–34.180, § 102–34.195, and § 102–34.200.

§ 102–34.135 Do we need to register motor vehicles owned or leased by the Government?

For a motor vehicle owned or leased by the Government that is regularly based or operated outside the District of Columbia and displaying U.S. Government license plates and motor vehicle identification, you need not register it in a State, Commonwealth, territory or possession of the United States. Motor vehicles exempted under § 102–34.180, § 102–34.195, or § 102–34.200 must be registered and inspected in accordance with the laws of the State, Commonwealth, territory or possession of the United States where the motor vehicle is regularly operated.

§ 102–34.140 Where may we obtain U.S. Government license plates?

For detailed instructions and an ordering form to obtain U.S. Government license plates, contact the: Superintendent of Industries, District of Columbia, Department of Corrections, Lorton, VA 22079.

NOTE TO § 102–34.140: You may, but are not required to obtain license plates from the District of Columbia, Department of Corrections.

§ 102–34.145 How do we display license plates on motor vehicles?

(a) Display official U.S. Government license plates on the front and rear of all motor vehicles owned or leased by the Government. The exception is two-wheeled motor vehicles, which require rear license plates only.

(b) You must display U.S. Government license plates on the motor vehicle to which the license plates were assigned.

(c) Display the U.S. Government license plates until the motor vehicle is removed from Government service or is transferred, or until the plates are damaged and require replacement.

(d) For motor vehicles owned or leased by DOD, follow DOD regulations.

§ 102–34.150 What do we do about a lost or stolen license plate?

You should report the loss or theft of license plates as follows:

(a) *U.S. Government license plates*. Tell your local security office (or equivalent) and local police.

(b) *District of Columbia or State license plates*. Tell your local security office (or equivalent) and either the District of Columbia, Department of Transportation, or the State agency, as appropriate.

§ 102–34.155 What records do we need to keep on U.S. Government license plates?

You must keep a central record of all U.S. Government license plates for your agency's motor vehicle purchases and motor vehicle leases. The GSA Fleet must keep such a record for GSA Fleet vehicles. The record must identify:

(a) The motor vehicle to which each set of plates is assigned.

(b) The complete history of any reassigned plates.

(c) A list of destroyed or voided license plate numbers.

§ 102–34.160 How are U.S. Government license plates coded and numbered?

U.S. Government license plates, except those issued by the District of Columbia, Department of Transportation, under § 102–34.170, will be numbered serially for each executive agency, beginning with 101, and preceded by a letter code that designates the owning agency for the motor vehicle as follows:

Agriculture, Department of—A
Air Force, Department of the—AF
Army, Department of the—W
Commerce, Department of—C
Consumer Product Safety Commission—CPSC
Corps of Engineers, Civil Works—CE
Defense, Department of—D
Defense Commissary Agency—DECA
Defense Contract Audit Agency—DA
Defense Logistics Agency—DLA
District of Columbia Redevelopment Land Agency—LA
Energy, Department of—E
Enrichment Corporation, U.S—EC
Environmental Protection Agency—EPA
Executive Office of the President—EO Council of Economic Advisers, National Security Council, Office of Management and Budget—EO
Federal Communications Commission—FC
Federal Deposit Insurance Corporation—FD
Federal Emergency Management Agency—FE
Federal Mediation and Conciliation Service—FM
General Services Administration—GS
Government Printing Office—GP
GSA Fleet—G
Health and Human Services, Department of—HHS
Interior, Department of the—I
Judicial Branch of the Government—JB
Justice, Department of—J
Labor, Department of—L
Legislative Branch—LB
Marine Corps—MC
National Aeronautics and Space Administration—NA
National Capital Planning Commission—NP
National Guard Bureau—NG
National Labor Relations Board—NL
National Science Foundation—NS
Navy, Department of the—N
Nuclear Regulatory Commission—NRC
Office of Personnel Management—OPM
Panama Canal Commission—PC
Railroad Retirement Board—RR
Selective Service System—SS
Small Business Administration—SB
Smithsonian Institution, National Gallery of Art—SI
Soldiers' and Airmen's Home, U.S—SH
State, Department of—S
Tennessee Valley Authority—TV
Transportation, Department of—DOT
Treasury, Department of the—T
United States Information Agency—IA
United States Postal Service—P
Veterans Affairs, Department of—VA

§ 102–34.165 How can we get a new license plate code designation?

To get a new license plate code designation, write to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

§ 102–34.170 Are there special licensing procedures for motor vehicles operating in the District of Columbia (DC)?

Yes. DC Code, section 40–102(d)(2), requires the issuance of license plates, without charge, for all motor vehicles owned or leased by the Government at the time the motor vehicle is registered or reregistered.

(a) You must register motor vehicles that are regularly based or operated in DC with the DC Department of Transportation. Your application to register must include a manufacturer's Certificate of Origin, bill of sale, or other document attesting Government ownership. Forms for registering motor vehicles are available from the District of Columbia, Department of Transportation.

(b) Motor vehicles owned or leased by the Government and licensed in the District of Columbia may have the letter code designation prescribed in § 102–34.160 stenciled in the blank space beside the embossed numbers. If you add a letter code designation, stencil it on the license plate so that the letters resemble the embossed numbers in size and color. License plates issued by the District of Columbia without an agency letter code designation will usually have the letter code designation ''US''.

(c) Transfer of U.S. Government license plates issued by the District of Columbia between your agency's own motor vehicles requires prior approval from the District of Columbia, Department of Transportation.

(d) You must have each registered motor vehicle inspected annually according to section 40–204 of the District of Columbia Code and applicable regulations. The District of Columbia

issues an inspection verification sticker for each motor vehicle that passes inspection. Inspections and stickers are free.

(e) Return damaged or mutilated license plates to the District of Columbia, Department of Transportation, for cancellation. Also return license plates when you transfer a motor vehicle regularly based or operated in the District of Columbia to operation in a field area, another agency, or remove the motor vehicle from Government service.

[64 FR 59593, Nov. 2, 1999; 64 FR 66967, Nov. 30, 2000]

IDENTIFICATION EXEMPTIONS

§ 102–34.175 What types of exemptions are there?

(a) Limited exemption.

(b) Unlimited exemption.

(c) Special exemption.

§ 102–34.180 May we have a limited exemption from displaying U.S. Government license plates and other motor vehicle identification?

Yes. The head of your agency or designee may authorize a limited exemption to the display of U.S. Government license plates and motor vehicle identification upon written certification. (See § 102–34.185.) For motor vehicles leased from the GSA Fleet, send an information copy of this certification to the: General Services Administration, Attn: FFF, Washington, DC 20406.

NOTE TO § 102–34.180: Not eligible for exemption are motor vehicles regularly used for common administrative purposes and not directly connected to investigative, law enforcement or intelligence duties involving security activities.

§ 102–34.185 What information must the certification contain?

The certification must state either:

(a) That the motor vehicle is used primarily for investigative, law enforcement or intelligence duties involving security activities and that identifying the motor vehicle would interfere with those duties; or

(b) That identifying the motor vehicle would endanger the security of the vehicle occupants.

§ 102–34.190 For how long is a limited exemption valid?

An exemption granted in accordance with § 102–34.180 and § 102–34.185 may last from one day up to one year. If the requirement for exemption still exists at the end of the year, your agency must re-certify the continued exemption. For a motor vehicle leased from the GSA Fleet, send a copy of the recertification to the: General Services Administration, ATTN: FFF, Washington, DC 20406.

§ 102–34.195 What agencies have an unlimited exemption from displaying U.S. Government license plates and motor vehicle identification?

The following Federal agencies, or activities within agencies, are granted an unlimited exemption based on ongoing mission requirements and do not need to certify:

(a) *Administrative Office of the United States Courts*. All motor vehicles used by United States probation offices and pretrial services agencies of the judicial branch of the U.S. Government.

(b) *Department of Agriculture*. Motor vehicles used for investigative or law enforcement activities by the Agricultural Marketing Service, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, Forest Service, Grain Inspection, Packers and Stockyard Administration, Packers and Stockyard Program, Food and Consumers Service, and Office of the Inspector General.

(c) *Department of Commerce*. Motor vehicles used for surveillance and other law enforcement activities by the Office of Export Enforcement, International Trade Administration, the National Marine Fisheries Service, and the National Oceanic and Atmospheric Administration.

(d) *Department of Defense*. Motor vehicles used for intelligence, investigative, or security activities by the U.S. Army Intelligence Agency and the Criminal Investigation Command of the Department of the Army; Office of Naval Intelligence of the Department of the Navy; Office of Special Investigations of the Department of the Air Force; the Defense Criminal Investigation Service, Office of the Inspector

General; and the Defense Logistics Agency.

(e) *District of Columbia*. Motor vehicles used by St. Elizabeth's Hospital in outpatient work where identifying the motor vehicles would be prejudicial to patients.

(f) *Department of Education*. Motor vehicles used for investigative and law enforcement activities by the Office of the Inspector General.

(g) *Department of Energy*. Motor vehicles used for investigative or security activities.

(h) *Environmental Protection Agency*. Motor vehicles used for investigative and law enforcement activities by the Office of Inspector General and the Office of Enforcement and Compliance Assurance.

(i) *Federal Communications Commission*. Motor vehicles used for investigative activities by the Field Operations Bureau.

(j) *General Services Administration*. Motor vehicles used for investigative, surveillance, and security activities by special agents of the Federal Protective Service, and Office of the Inspector General.

(k) *Department of Health and Human Services*. Motor vehicles used for undercover law enforcement and similar investigative work by the Food and Drug Administration; motor vehicles used to transport mentally disturbed children by the National Institutes of Health; and motor vehicles used for law enforcement and investigative purposes by the Office of Investigations and the Office of the Inspector General.

(l) *Department of Housing and Urban Development*. Motor vehicles used for law enforcement or investigative purposes by the Office of the Inspector General.

(m) *Department of the Interior*. Motor vehicles used to enforce game laws by the U.S. Fish and Wildlife Service; motor vehicles assigned to special agents of the Bureau of Land Management who investigate crimes against public lands; motor vehicles assigned to special officers of the Bureau of Indian Affairs; motor vehicles used for investigating crimes against public lands by the National Park Service and assigned to the U.S. Park Police; and motor vehicles assigned to the special agents of the Office of the Inspector General who investigate possible crimes of fraud and abuse by departmental employees, contractors, and grantees.

(n) *Department of Justice*. All motor vehicles used for undercover law enforcement activities or investigative work by the Department.

(o) *Department of Labor*. All motor vehicles used for investigative, law enforcement, and compliance activities by the Employment and Training Administration, Occupational Safety and Health Administration, Employment Standards Administration, and the Mine Safety and Health Administration.

(p) *National Aeronautics and Space Administration*. Motor vehicles used for investigative or law enforcement activities.

(q) *National Labor Relations Board*. Motor vehicles used for investigative activities by field offices.

(r) *National Security Council*. Motor vehicles used by the Central Intelligence Agency.

(s) *Nuclear Regulatory Commission*. Motor vehicles used for the conduct of security operations or in the enforcement of security regulations.

(t) *Office of Personnel Management*. Motor vehicles used for the investigative program of the Office of Personnel Investigations and regional investigation activities.

(u) *United States Postal Service*. Motor vehicles that the Postal Inspection Service uses for investigative and law enforcement activities.

(v) *Department of State*. Motor vehicles used for protecting domestic and foreign dignitaries and investigating passport and visa fraud.

(w) *Department of Transportation*. Motor vehicles used for intelligence, investigative, or security activities by the Office of the Inspector General, the OST Office of Security, the Investigations and Security Division and field counterparts in the U.S. Coast Guard, the Office of Civil Aviation Security and field counterparts in the Federal Aviation Administration, and the Idaho Division Office of Motor Carriers in the Federal Highway Administration.

(x) *Department of Treasury*. Motor vehicles used by the U.S. Secret Service; the Criminal Investigation Division and the Internal Security Division of the Internal Revenue Service; motor vehicles used for investigative activities by the Collection Division of the Internal Revenue Service; motor vehicles used by the Office of Enforcement and the Office of Inspection at the Bureau of Alcohol, Tobacco, and Firearms; and motor vehicles used by the Office of Enforcement, Office of Compliance Operations, and the Office of Internal Affairs at the U.S. Customs Service.

(y) *Department of Veterans Affairs*. Motor vehicles used for investigative activities by the Office of the Inspector General and regional Field Examiners and Property Management Inspectors.

§ 102–34.200 What agencies have a special exemption from displaying U.S. Government license plates and motor vehicle identification?

Motor vehicles assigned for the use of the President and the heads of executive departments specified in 5 U.S.C. 101 are exempt from the requirement to display motor vehicle identification. All motor vehicles, other than those assigned for the personal use of the President, will display official U.S. Government license plates.

§ 102–34.205 What license plates and motor vehicle identification do we use on motor vehicles that are exempt from motor vehicle identification and U.S. Government license plates?

Display the regular license plates of the State, Commonwealth, territory or possession of the United States, or the District of Columbia, where the motor vehicle is principally operated.

§ 102–34.210 What special requirements apply to exempted motor vehicles operating in the District of Columbia?

If your agency wants to use regular District of Columbia license plates for motor vehicles exempt from displaying U.S. government license plates and motor vehicle identification, your agency head must designate an official to authorize them. Provide the name and facsimile signature of that official to the District of Columbia, Department of Transportation, annually.

§ 102–34.215 Can GSA ask for a listing of exempted motor vehicles?

Yes. If asked, the head of each executive agency must submit a report concerning motor vehicles exempted under this subpart. This report, which has been assigned interagency report control number 1537–GSA–AR, should be submitted to the: General Services Administration, ATTN: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart C—Official Use of Government Motor Vehicles

§ 102–34.220 What is official use of a motor vehicle owned or leased by the Government?

Official use of a motor vehicle is using a motor vehicle to perform your agency's mission(s), as authorized by your agency.

§ 102–34.225 May I use a motor vehicle owned or leased by the Government for transportation between my residence and place of employment?

No, you may not use a Government motor vehicle for transportation between your residence and place of employment unless your agency authorizes such use after making the necessary determination under 31 U.S.C. 1344 and subpart 101–6.4 of this title. Your agency must keep a copy of the written authorization within the agency and monitor the use of these motor vehicles.

§ 102–34.230 May Government contractors use motor vehicles owned or leased by the Government?

Yes, Government contractors may use Government motor vehicles when authorized under applicable procedures and the following conditions:

(a) Motor vehicles are used for official purposes only and solely in the performance of the contract.

(b) Motor vehicles cannot be used for transportation between residence and place of employment, unless authorized in accordance with 31 U.S.C. 1344 and subpart 101–6.4 of this title.

(c) Contractors must:

(1) Establish and enforce suitable penalties against employees who use, or authorize the use of, such motor vehicles for unofficial purposes or for other than in the performance of the contract; and

(2) Pay any expenses or cost, without Government reimbursement, for using such motor vehicles other than in the performance of the contract.

§ 102–34.235 What does GSA do if it learns of unofficial use of a motor vehicle owned or leased by the Government?

GSA reports the matter to the head of the agency employing the motor vehicle operator. The employing agency investigates and may, if appropriate, take disciplinary action under 31 U.S.C. 1349 or may report the violation to the Attorney General for prosecution under 18 U.S.C. 641.

§ 102–34.240 How are Federal employees disciplined for misuse of motor vehicles owned or leased by the Government?

If an employee willfully uses, or authorizes the use of, a motor vehicle for other than official purposes, the employee is subject to suspension of at least one month or, up to and including, removal by the head of the agency (31 U.S.C. 1349).

§ 102–34.245 How am I responsible for protecting motor vehicles?

When a Government-owned or -leased motor vehicle is under your control, you must:

(a) Park or store the vehicle in a manner that reasonably protects it from theft or damage.

(b) Lock the unattended motor vehicle. (The only exception to this requirement is when fire regulations or other directives prohibit locking motor vehicles in closed buildings or enclosures.)

§ 102–34.250 Am I bound by State and local traffic laws?

Yes. You must obey all motor vehicle traffic laws of the State and local jurisdiction, except when the duties of your position require otherwise. You are personally responsible if you violate State or local traffic laws. If you are fined or otherwise penalized for an offense you commit while performing your official duties, but which was not required as part of your official duties, payment is your personal responsibility.

§ 102–34.255 Who pays for parking fees and fines?

You must pay parking fees while operating a motor vehicle owned or leased by the Government. However, you can expect to be reimbursed for parking fees incurred while performing official duties. Conversely, if you are fined for a parking violation while operating a motor vehicle owned or leased by the Government, payment is your personal responsibility and you will not be reimbursed.

§ 102–34.260 Do Federal employees in motor vehicles owned or leased by the government have to use safety belts?

Yes Federal employees must use safety belts, when there is a safety belt.

Subpart D—Replacement of Motor Vehicles

§ 102–34.265 What are motor vehicle replacement standards?

Motor vehicle replacement standards specify the minimum number of years in use or miles traveled at which an executive agency may replace a Government-owned motor vehicle (see § 102–34.280) .

§ 102–34.270 May we replace a Government-owned motor vehicle sooner?

Yes. You may replace a Government-owned motor vehicle if it needs body or mechanical repairs that exceed the fair market value of the motor vehicle. Determine the fair market value by adding the current market value of the motor vehicle plus any capitalized motor vehicle additions (such as a utility body or liftgate) or repairs. Your agency head or designee must review the replacement in advance.

§ 102–34.275 May we keep a Government-owned motor vehicle even though the standard permits replacement?

Yes. The replacement standard is a minimum only, and therefore, you may

keep a Government-owned motor vehicle longer than shown in § 102–34.280 if the motor vehicle can be operated without excessive maintenance costs or substantial reduction in resale value.

§ 102–34.280 How long must we keep a Government-owned motor vehicle?

You must keep a motor vehicle owned or leased by the Government for at least the years or miles shown in the following table:

TABLE OF MINIMUM REPLACEMENT STANDARDS

Motor vehicle type	Years [a]	or Miles [a]
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000
Buses:		
Intercity	n/a	280,000
City	n/a	150,000
School	n/a	80,000
Trucks:		
Less than 12,500 pounds GVWR	6	50,000
12,500–23,999 pounds GVWR	7	60,000
24,000 pounds GVWR and over	9	80,000
4- or 6-wheel drive motor vehicles	6	40,000

[a] Minimum standards are stated in both years and miles; use whichever occurs first.

Subpart E—Scheduled Maintenance of Motor Vehicles

§ 102–34.285 What kind of maintenance programs must we have?

You must have a scheduled maintenance program for each motor vehicle you own or lease. This requirement applies to motor vehicles operated in any State, Commonwealth, territory or possession of the United States, and the District of Columbia. The GSA Fleet will develop maintenance programs for GSA Fleet vehicles. The scheduled maintenance program must:

(a) Meet Federal, State, and local emission standards;

(b) Meet manufacturer warranty requirements;

(c) Ensure the safe and economical operating condition of the motor vehicle throughout its life; and

(d) Ensure that inspections and servicing occur as recommended by the manufacturer or more often if local operating conditions require.

§ 102–34.290 Must our motor vehicles pass State inspections?

Yes your motor vehicles must pass State inspections, where mandated.

(a) Each motor vehicle owned or leased by the Government must pass Federally-mandated emission inspections in the jurisdictions in which they operate when required by State motor vehicle administrations or State environmental departments. You must reimburse State activities for the cost of these inspections if the fee is not waived. GSA will pay the cost of these inspections for motor vehicles leased from the GSA Fleet.

(b) Motor vehicles owned or leased by the Government that are exempted from the display of U.S. Government license plates and motor vehicle identification must comply with emission and mechanical inspection programs of the State, Commonwealth, territory or possession of the United States or the District of Columbia in which they are regularly operated. Your agency must pay for these inspections, unless the fee is waived. Payment for these inspections for motor vehicles leased from the GSA Fleet are the responsibility of the using agency.

§ 102–34.295 Where can we obtain help in setting up a maintenance program?

For help in setting up a maintenance programs, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart F—Motor Vehicle Accident Reporting

§ 102–34.300 What forms do I use to report an accident involving a motor vehicle owned or leased by the Government?

GSA recommends the following forms for use to report an accident in any State, Commonwealth, territory or possession of the United States and the District of Columbia. The forms should be carried in any motor vehicle owned or leased by the Government.

(a) *Standard Form 91, Motor Vehicle Accident Report*. The motor vehicle operator should complete this form at the time and scene of the accident if possible, even if damage to the motor vehicle is not noticeable.

(b) *Standard Form 94, Statement of Witness*. This form should be completed by any witness to the accident.

§ 102–34.305 To whom do we send accident reports?

Send accident reports as follows:

(a) If the motor vehicle is owned or leased by your agency, follow your internal agency directives.

(b) If the motor vehicle is managed by the GSA Fleet, report the accident to GSA in accordance with subpart 101–39.4 of this title.

Subpart G—Disposal of Motor Vehicles

§ 102–34.310 How do we dispose of a motor vehicle in any State, Commonwealth, territory or possession of the United States, or the District of Columbia?

After meeting the replacement standards under subpart D of this part, you may dispose of a Government-owned motor vehicle by transferring the motor vehicle title, or manufacturer's Certificate of Origin, to the new owner. Detailed instructions on the disposal process are in parts 101–45 and 101–46 of this title.

§ 102–34.315 What forms do we use to transfer ownership when selling a motor vehicle?

Use the following forms to transfer ownership:

(a) Standard Form 97, The United States Government Certificate to Obtain Title to a Motor Vehicle, if both of the following apply:

(1) The motor vehicle will be retitled by a State, Commonwealth, territory or possession of the United States or the District of Columbia; and

(2) The purchaser intends to operate the motor vehicle on highways.

NOTE TO § 102–34.315(a)(2): Do not use Standard Form 97 if the Government-owned motor vehicle is either not designed or not legal for operation on highways. Examples are construction equipment, farm machinery, and certain military-design motor vehicles. Instead, use an appropriate bill of sale or award document. Examples are Optional Form 16, Sales Slip-Sale of Government Personal Property, and Standard Form 114, Sale of Government Property—Bid and Award.

(b) Standard Form 97 is optional in foreign countries because foreign governments may require the use of other forms.

NOTE TO § 102–34.315: The original Standard Form 97 is printed on secure paper to identify readily any attempt to alter the form. The form is also pre-numbered to prevent duplicates. State motor vehicle agencies may reject certificates showing erasures or strikeovers.

§ 102–34.320 How do we distribute the completed Standard Form 97?

Standard Form 97 is a 4-part set printed on continuous-feed paper. Distribute the form as follows:

(a) Original SF 97 to the purchaser or donee.

(b) One copy to the owning agency.

(c) One copy to the contracting officer making the sale or transfer of the motor vehicle.

(d) One copy under owning-agency directives.

Subpart H—Motor Vehicle Fueling

§ 102–34.325 How do we obtain fuel for motor vehicles?

You may obtain fuel for any motor vehicle owned or leased by the Government by using:

(a) A Government-issued charge card;

(b) A Government agency fueling facility; or

(c) Personal funds and obtaining reimbursement from your agency.

§ 102–34.330 What Government-issued charge cards may I use to purchase fuel and motor vehicle related services?

(a) You may use a fleet charge card specifically issued for this purpose. These cards are designed to collect motor vehicle data at the time of purchase. Where appropriate, State sales and motor fuel taxes are deducted from fuel purchases by the fleet charge card services contractor before your agency is billed. The GSA contractor issued fleet charge card is the only Government-issued charge card that may be used for GSA Fleet motor vehicles. For further information on acquiring these fleet charge cards and their use, contact the: General Services Administration, Attn: FCX, Washington, DC 20406.

(b) You may use a Government purchase card if you do not have a fleet charge card or if the use of such a government purchase card is required by your agency mission. However, the Government purchase card does not collect motor vehicle data nor does it deduct State sales and motor fuel taxes.

§ 102–34.335 What type of fuel do I use in motor vehicles?

(a) Use the grade (octane rating) of fuel recommended by the motor vehicle manufacturer when fueling motor vehicles owned or leased by the Government.

(b) Do not use premium grade gasoline in any motor vehicle owned or leased by the Government unless the motor vehicle specifically requires premium grade gasoline.

(c) Use unleaded gasoline in all Government owned or leased motor vehicles designed to operate on gasoline and used overseas unless:

(1) Such use would be in conflict with country-to-country or multi-national logistics agreements; or

(2) Such gasoline is not available locally.

§ 102–34.340 Do I have to use self-service fuel pumps?

Yes. You must use self-service fuel pumps to the fullest extent possible.

Subpart I—Federal Motor Vehicle Fleet Report

§ 102–34.345 What is the Federal Motor Vehicle Fleet Report?

The Federal Motor Vehicle Fleet Report is compiled by GSA annually from information submitted by Federal agencies on motor vehicle inventory, cost, and use data. GSA supplies copies of the report to the Congress, Federal agencies, and other organizations upon request.

Recipients of this report use it to evaluate and analyze operations and management of the Federal motor vehicle fleet.

§ 102–34.350 What records do we need to keep?

For owned motor vehicles, you are responsible for developing adequate accounting and reporting procedures to ensure accurate reporting of inventory, cost, and operational data needed to manage and control motor vehicles.

§ 102–34.355 When and how do we report motor vehicle data?

(a) Within 75 calendar days after the end of the fiscal year, use Standard Form 82, Agency Report of Motor Vehicle Data, to report motor vehicle inventory, cost, and operating information. Send the Standard Form 82 to the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

(b) Use separate forms to report data for domestic and foreign fleets.

(1) For motor vehicles lent to another agency during the reporting period, the owning agency reports all data.

(2) For motor vehicles transferred from one owning agency to another, each agency reports data for the time it retained accountability.

(c) Detailed instructions are included as part of the form. You can also complete the Standard Form 82 electronically using a computerized input medium. For further information, contact the: General Services Administration, Attn: MTV, Washington, DC 20405. Email: *vehicle.policy@gsa.gov*

Subpart J—Forms

§ 102–34.360 How do we obtain the forms prescribed in this part?

See § 102–2.135 of this chapter for how to obtain forms prescribed in this part.

PART 102–35—DISPOSITION OF PERSONAL PROPERTY [RESERVED]

PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 65 FR 31218, May 16, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 102–36.5 What is the governing authority for this part?

Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act) (40 U.S.C. 486), authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under the Property Act. Section 202 of the Property Act (40 U.S.C. 483) authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

§ 102–36.10 What does this part cover?

This part covers the acquisition, transfer, and disposal, by executive agencies, of excess personal property located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

§ 102–36.15 Who must comply with the provisions of this part?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to report and transfer excess personal property and fill their personal property requirements from excess in accordance with these provisions.

§ 102–36.20 To whom do "we", "you", and their variants refer?

Use of pronouns ''we'', ''you'', and their variants throughout this part refer to the agency.

§ 102–36.25 How do we request a deviation from these requirements and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

§ 102–36.30 When is personal property excess?

Personal property is excess when it is no longer needed by the activities within your agency to carry out the functions of official programs, as determined by the agency head or designee.

§ 102–36.35 What is the typical process for disposing of excess personal property?

(a) You must ensure personal property not needed by your activity is offered for use elsewhere within your agency. If the property is no longer needed by any activity within your agency, your agency declares the property excess and reports it to GSA for possible transfer to eligible recipients, including Federal agencies for direct use or for use by their contractors, project grantees, or cooperative agreement recipients. All executive agencies must, to the maximum extent practicable, fill requirements for personal property by using existing agency property or by obtaining excess property from other Federal agencies in lieu of new procurements.

(b) If GSA determines that there are no Federal requirements for your excess personal property, it becomes surplus property and is available for donation to State and local public agencies and other eligible non-Federal activities. The Property Act requires that surplus personal property be distributed to eligible recipients by an agency established by each State for this purpose, the State Agency for Surplus Property.

(c) Surplus personal property not selected for donation is offered for sale to the public by competitive offerings such as sealed bid sales, spot bid sales or auctions. You may conduct or contract for the sale of your surplus personal property, or have GSA or another executive agency conduct the sale on behalf of your agency in accordance with part 101–45 of this title. You must inform GSA at the time the property is reported as excess if you do not want GSA to conduct the sale for you.

(d) If a written determination is made that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies.

DEFINITIONS

§ 102–36.40 What definitions apply to this part?

The following definitions apply to this part:

Commerce Control List Items (CCLIs) are dual use (commercial/military) items that are subject to export control by the Bureau of Export Administration, Department of Commerce. These items have been identified in the U.S. Export Administration Regulations (15 CFR part 774) as export controlled for reasons of national security, crime control, technology transfer and scarcity of materials.

Cooperative means the organization or entity that has a cooperative agreement with a Federal agency.

Cooperative agreement means a legal instrument reflecting a relationship between a Federal agency and a non-Federal recipient, made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–6308), under any or all of the following circumstances:

(1) The purpose of the relationship is the transfer, between a Federal agency and a non-Federal entity, of money, property, services, or anything of value to accomplish a public purpose authorized by law, rather than by purchase, lease, or barter, for the direct benefit or use of the Federal Government.

(2) Substantial involvement is anticipated between the Federal agency and the cooperative during the performance of the agreed upon activity.

(3) The cooperative is a State or local government entity or any person or organization authorized to receive Federal assistance or procurement contracts.

Demilitarization means, as defined by the Department of Defense, the act of destroying the military capabilities inherent in certain types of equipment or material. Such destruction may include deep sea dumping, mutilation, cutting, crushing, scrapping, melting, burning, or alteration so as to prevent the further use of the item for its originally intended purpose.

Excess personal property means any personal property under the control of any Federal agency that is no longer required for that agency's needs, as determined by the agency head or designee.

Exchange/sale property means property not excess to the needs of the holding agency but eligible for replacement, which is exchanged or sold under the provisions of part 101–46 of this title in order to apply the exchange allowance or proceeds of sale in whole or part payment for replacement with a similar item.

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

Fair market value means the best estimate of the gross sales proceeds if the property were to be sold in a public sale.

Federal agency means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

Federal Disposal System (FEDS) is GSA's automated excess personal property system. For additional information on using FEDS, access http://pub.fss.gsa.gov/property/.

Flight Safety Critical Aircraft Part (FSCAP) is any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in engine shut-down or loss or serious damage to the aircraft resulting in an unsafe condition.

Foreign excess personal property is any U.S. owned excess personal property located outside the United States (U.S.), the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

Grant means a type of assistance award and a legal instrument which permits a Federal agency to transfer money, property, services or other things of value to a grantee when no substantial involvement is anticipated between the agency and the recipient during the performance of the contemplated activity.

Hazardous personal property means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601–2609).

Holding agency means the Federal agency having accountability for, and generally possession of, the property involved.

Intangible personal property means personal property in which the existence and value of the property is generally represented by a descriptive document rather than the property itself. Some examples are patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, and shares of stock.

Life-limited aircraft part is an aircraft part that has a finite service life expressed in either total operating hours, total cycles, and/or calendar time.

Line item means a single line entry, on a reporting form or transfer order, for items of property of the same type having the same description, condition code, and unit cost.

Munitions List Items (MLIs) are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State.

Nonappropriated fund activity means an activity or entity that is not funded by money appropriated from the general fund of the U.S. Treasury, such as post exchanges, ship stores, military officers' clubs, veterans' canteens, and similar activities. Such property is not Federal property.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

Project grant means a grant made for a specific purpose and with a specific termination date.

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 386), as amended.

Public agency means any State, political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Related personal property means any personal property that is an integral part of real property. It is:

(1) Related to, designed for, or specifically adapted to the functional capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property; or

(2) Determined by the Administrator of General Services to be related to the real property.

Salvage means property that has value greater than its basic material content but for which repair or rehabilitation is clearly impractical and/or uneconomical.

Scrap means property that has no value except for its basic material content.

Screening period means the period in which excess and surplus personal property are made available for excess transfer or surplus donation to eligible recipients.

Shelf-life item is any item that deteriorates over time or has unstable characteristics such that a storage period must be assigned to assure the item is issued within that period to provide satisfactory performance. Management of such items is governed by part 101–27, subpart 27.2, of this title and by DOD instructions, for executive agencies and DOD respectively.

Surplus personal property (surplus) means excess personal property no longer required by the Federal agencies as determined by GSA.

Surplus release date means the date when Federal screening has been completed and the excess property becomes surplus.

Transfer with reimbursement means a transfer of excess personal property between Federal agencies where the recipient is required to pay, i.e. reimburse the holding agency, for the property.

Unit cost means the original acquisition cost of a single item of property.

United States means all the 50 States and the District of Columbia.

Vessels means ships, boats and craft designed for navigation in and on the water, propelled by oars or paddles, sail, or power.

RESPONSIBILITY

§ 102–36.45 What are our responsibilities in the management of excess personal property?

(a) Agency procurement policies should require consideration of excess personal property before authorizing procurement of new personal property.

(b) You are encouraged to designate national and regional property management officials to:

(1) Promote the use of available excess personal property to the maximum extent practicable by your agency.

(2) Review and approve the acquisition and disposal of excess personal property.

(3) Ensure that any agency implementing procedures comply with this part.

(c) When acquiring excess personal property, you must:

(1) Limit the quantity acquired to that which is needed to adequately perform the function necessary to support the mission of your agency.

(2) Establish controls over the processing of excess personal property transfer orders.

(3) Facilitate the timely pickup of acquired excess personal property from the holding agency.

(d) While excess personal property you have acquired is in your custody, or the custody of your non-Federal recipients and the Government retains title, you and/or the non-Federal recipient must do the following:

(1) Establish and maintain a system for property accountability.

(2) Protect the property against hazards including but not limited to fire, theft, vandalism, and weather.

(3) Perform the care and handling of personal property. ''Care and handling'' includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting excess and surplus personal property, and destroying or rendering innocuous property which is dangerous to public health or safety.

(4) Maintain appropriate inventory levels as set forth in part 101–27 of this title.

(5) Continuously monitor the personal property under your control to assure maximum use, and develop and maintain a system to prevent and detect nonuse, improper use, unauthorized disposal or destruction of personal property.

(e) When you no longer need personal property to carry out the mission of your program, you must:

(1) Offer the property for reassignment to other activities within your agency.

(2) Promptly report excess personal property to GSA when it is no longer needed by any activity within your agency for further reuse by eligible recipients.

(3) Continue the care and handling of excess personal property while it goes through the disposal process.

(4) Facilitate the timely transfer of excess personal property to other Federal agencies or authorized eligible recipients.

(5) Provide reasonable access to authorized personnel for inspection and removal of excess personal property.

(6) Ensure that final disposition complies with applicable environmental, health, safety and national security regulations.

§ 102–36.50 May we use a contractor to perform the functions of excess personal property disposal?

Yes, you may use service contracts to perform disposal functions that are not inherently Governmental, such as warehousing or custodial duties. You are responsible for ensuring that the contractor conforms with the requirements of the Property Act and the Federal Management Regulation (41 CFR chapter 102), and any other applicable statutes and regulations when performing these functions.

§ 102–36.55 What is GSA's role in the disposition of excess personal property?

In addition to developing and issuing regulations for the management of excess personal property, GSA:

(a) Screens and offers available excess personal property to Federal agencies and eligible non-Federal recipients.

(b) Approves and processes transfers of excess personal property to eligible activities.

(c) Determines the amount of reimbursement for transfers of excess personal property when appropriate.

(d) Conducts sales of surplus and exchange/sale personal property when requested by an agency.

(e) Maintains an automated system, FEDS, to facilitate the reporting and transferring of excess personal property.

Subpart B—Acquiring Excess Personal Property For Our Agency

ACQUIRING EXCESS

§ 102–36.60 Who is eligible to acquire excess personal property as authorized by the Property Act?

The following are eligible to acquire excess personal property:

(a) Federal agencies (for their own use or use by their authorized contractors, cooperatives, and project grantees).

(b) The Senate.

(c) The House of Representatives.

(d) The Architect of the Capitol and any activities under his direction.

(e) The DC Government.

(f) Mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

§ 102–36.65 Why must we use excess personal property instead of buying new property?

Using excess personal property to the maximum extent practicable maximizes the return on Government dollars spent and minimizes expenditures for new procurement. Before purchasing new property, check with the appropriate regional GSA Personal Property Management office or access

FEDS for any available excess personal property that may be suitable for your needs. You must use excess personal property unless it would cause serious hardship, be impractical, or impair your operations.

§ 102–36.70 What must we consider when acquiring excess personal property?

Consider the following when acquiring excess personal property:

(a) There must be an authorized requirement.

(b) The cost of acquiring and maintaining the excess personal property (including packing, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new material.

(c) The sources of spare parts or repair/maintenance services to support the acquired item are readily accessible.

(d) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(e) The excess personal property will fulfill the required need with reasonable certainty without sacrificing mission or schedule.

(f) You must not acquire excess personal property with the intent to sell or trade for other assets.

§ 102–36.75 Do we pay for excess personal property we acquire from another Federal agency under a transfer?

(a) No, except for the situations listed in paragraph (b) of this section, you do not pay for the property. However, you are responsible for shipping and transportation costs. Where applicable, you may also be required to pay packing, loading, and any costs directly related to the dismantling of the property when required for the purpose of transporting the property.

(b) You may be required to reimburse the holding agency for excess personal property transferred to you (*i.e.*, transfer with reimbursement) when:

(1) Reimbursement is directed by GSA.

(2) The property was originally acquired with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue and the holding agency requests reimbursement. It is executive branch policy that working capital fund property shall be transferred without reimbursement.

(3) The property was acquired with appropriated funds, but reimbursement is required or authorized by law.

(4) You or the holding agency is the U.S. Postal Service (USPS).

(5) You are acquiring excess personal property for use by a project grantee that is a public agency or a nonprofit organization and exempt from taxation under 26 U.S.C. 501.

(6) You or the holding agency is the DC Government.

(7) You or the holding agency is a wholly owned or mixed-ownership Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101–9110).

§ 102–36.80 How much do we pay for excess personal property on a transfer with reimbursement?

(a) You may be required to reimburse the holding agency the fair market value when the transfer involves any of the conditions in § 102–36.75(b)(1) through (b)(4).

(b) When acquiring excess personal property for your project grantees (§ 102–36.75(b)(5)), you are required to deposit into the miscellaneous receipts fund of the U.S. Treasury an amount equal to 25 percent of the original acquisition cost of the property, except for transfers under the conditions cited in § 102–36.190.

(c) When you or the holding agency is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102–36.75(b)(6) or (b)(7)), you are required to reimburse the holding agency using fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. Where circumstances warrant, a higher fair value may be used if the agencies concerned agree. Due to special circumstances or the unusual nature of the property, the holding agency may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional

GSA Personal Property Management office.

§ 102–36.85 Do we pay for personal property we acquire when it is disposed of by another agency under the exchange/sale authority, and how much do we pay?

Yes, you must pay for personal property disposed of under the exchange/sale authority, in the amount required by the holding agency. The amount of reimbursement is normally the fair market value.

SCREENING OF EXCESS

§ 102–36.90 How do we find out what personal property is available as excess?

You may use the following methods to find out what excess personal property is available:

(a) Check GSA's automated excess personal property system FEDS. For information on FEDS access http://pub.fss.gsa.gov/property/.

(b) Contact or submit want lists to regional GSA Personal Property Management offices.

(c) Check any available holding agency websites (see http://www.policyworks.gov/surplus for a list of Federal agency websites.).

(d) Conduct on-site screening at various Federal facilities.

§ 102–36.95 How long is excess personal property available for screening?

The screening period for excess personal property is normally 21 calendar days. GSA may extend or shorten the screening period in coordination with the holding agency. For screening timeframes for Government property in the possession of contractors see the Federal Acquisition Regulation (48 CFR part 45).

§ 102–36.100 When does the screening period start for excess personal property?

Screening starts when GSA receives the report of excess personal property (see § 102–36.230).

§ 102–36.105 Who is authorized to screen and where do we go to screen excess personal property on-site?

You may authorize your agency employees, contractors, or non-Federal recipients that you sponsor to screen excess personal property. You may visit Defense Reutilization and Marketing Offices (DRMOs) and DOD contractor facilities to screen excess personal property generated by the Department of Defense. You may also inspect excess personal property at various civilian agency facilities throughout the United States.

§ 102–36.110 Do we need authorization to screen excess personal property?

(a) Yes, when entering a Federal facility, Federal agency employees must present a valid Federal ID. Non-Federal individuals will need proof of authorization from their sponsoring Federal agency in addition to a valid picture identification.

(b) Entry on some Federal and contractor facilities may require special authorization from that facility. Persons wishing to screen excess personal property on such a facility must obtain approval from that agency. Contact your regional GSA Personal Property Management office for locations and accessibility.

§ 102–36.115 What information must we include in the authorization form for non-Federal persons to screen excess personal property?

(a) For non-Federal persons to screen excess personal property, you must provide on the authorization form:

(1) The individual's name and the organization he/she represents;

(2) The period of time and location(s) in which screening will be conducted; and

(3) The number and completion date of the applicable contract, cooperative agreement, or grant.

(b) An authorized official of your agency must sign the authorization form.

§ 102–36.120 What are our responsibilities in authorizing a non-Federal individual to screen excess personal property?

You must do the following:

(a) Ensure that the non-Federal screener certifies that any and all property requested will be used for authorized official purpose(s).

(b) Maintain a record of the authorized screeners under your authority, to include names, addresses and telephone numbers, and any additional identifying information such as driver's license or social security numbers.

(c) Retrieve any expired or invalid screener's authorization forms.

PROCESSING TRANSFERS

§ 102–36.125 How do we process a Standard Form 122 (SF 122), Transfer Order Excess Personal Property, through GSA?

(a) You must first contact the appropriate regional GSA Personal Property Management office to assure the property is available to you. Submit your request on a SF 122, Transfer Order Excess Personal Property, to the region in which the property is located. For the types of property listed in the table in paragraph (b) of this section, submit the SF 122 to the corresponding GSA regions. You may submit the SF 122 manually or transmit the required information by electronic media (FEDS) or any other transfer form specified and approved by GSA.

(b) For the following types of property, you must submit the SF 122 to the corresponding GSA regions:

Type of property	GSA region	Location
Aircraft	9 FBP	San Francisco, CA 94102.
Firearms	7 FP–8	Denver, CO 80225.
Foreign Gifts	FBP	Washington, DC 20406.
Forfeited Property	3 FP	Washington, DC 20407.
Standard Forms	7 FMP	Ft. Worth, TX 76102.
Vessels, civilian	4 FD	Atlanta, GA 30365.
Vessels, DOD	3 FPD	Philadelphia, PA 19107.

[65 FR 31218, May 16, 2000; 65 FR 33889, May 25, 2000]

§ 102–36.130 What are our responsibilities in processing transfer orders of excess personal property?

Whether the excess is for your use or for use by a non-Federal recipient that you sponsor, you must:

(a) Ensure that only authorized Federal officials of your agency sign the SF 122 prior to submission to GSA for approval.

(b) Ensure that excess personal property approved for transfer is used for authorized official purpose(s).

(c) Advise GSA of names of agency officials that are authorized to approve SF 122s, and notify GSA of any changes in signatory authority.

§ 102–36.135 How much time do we have to pick up excess personal property that has been approved for transfer?

When the holding agency notifies you that the property is ready for removal, you normally have 15 calendar days to pick up the property, unless otherwise coordinated with the holding agency.

§ 102–36.140 May we arrange to have the excess personal property shipped to its final destination?

Yes, when the holding agency agrees to provide assistance in preparing the property for shipping. You may be required to pay the holding agency any direct costs in preparing the property for shipment. You must provide shipping instructions and the appropriate fund code for billing purposes on the SF 122.

DIRECT TRANSFERS

§ 102–36.145 May we obtain excess personal property directly from another Federal agency without GSA approval?

Yes, but only under the following situations:

(a) You may obtain excess personal property that has not yet been reported to GSA, provided the total acquisition cost of the excess property does not exceed $10,000 per line item. You must ensure that a SF 122 is completed for the direct transfer and that an authorized official of your agency signs the SF 122. You must provide a copy of the SF 122 to the appropriate regional GSA office within 10 workdays from the date of the transaction.

(b) You may obtain excess personal property exceeding the $10,000 per line item limitation, provided you first contact the appropriate regional GSA Personal Property Management office for verbal approval of a prearranged transfer. You must annotate the SF 122 with the name of the GSA approving official and the date of the verbal approval,

and provide a copy of the SF 122 to GSA within 10 workdays from the date of transaction.

(c) You are subject to the requirement to pay reimbursement for the excess personal property under a direct transfer when any of the conditions in § 102–36.75(b) applies.

(d) You may obtain excess personal property directly from another Federal agency without GSA approval when that Federal agency has statutory authority to dispose of such excess personal property and you are an eligible recipient.

Subpart C—Acquiring Excess Personal Property for Non-Federal Recipients

§ 102–36.150 For which non-Federal activities may we acquire excess personal property?

Under the Property Act you may acquire and furnish excess personal property for use by your nonappropriated fund activities, contractors, cooperatives, and project grantees. You may acquire and furnish excess personal property for use by other eligible recipients only when you have specific statutory authority to do so.

§ 102–36.155 What are our responsibilities when acquiring excess personal property for use by a non-Federal recipient?

When acquiring excess personal property for use by a non-Federal recipient, your authorized agency official must:

(a) Ensure the use of excess personal property by the non-Federal recipient is authorized and complies with applicable Federal regulations and agency guidelines.

(b) Determine that the use of excess personal property will reduce the costs to the Government and/or that it is in the Government's best interest to furnish excess personal property.

(c) Review and approve transfer documents for excess personal property as the sponsoring Federal agency.

(d) Ensure the non-Federal recipient is aware of his obligations under the FMR and your agency regulations regarding the management of excess personal property.

(e) Ensure the non-Federal recipient does not stockpile the property but places the property into use within a reasonable period of time, and has a system to prevent nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished.

(f) Establish provisions and procedures for property accountability and disposition in situations when the Government retains title.

(g) Report annually to GSA excess personal property furnished to non-Federal recipients during the year (see § 102–36.295).

§ 102–36.160 What additional information must we provide on the SF 122 when acquiring excess personal property for non-Federal recipients?

Annotate on the SF 122, the name of the non-Federal recipient and the contract, grant or agreement number, when applicable, and the scheduled completion/expiration date of the contract, grant or agreement. If the remaining time prior to the expiration date is less than 60 calendar days, you must certify that the contract, grant or agreement will be extended or renewed or provide other written justification for the transfer.

NONAPPROPRIATED FUND ACTIVITIES

§ 102–36.165 Do we retain title to excess personal property furnished to a nonappropriated fund activity within our agency?

Yes, title to excess personal property furnished to a nonappropriated fund activity remains with the Federal Government and you are accountable for establishing controls over the use of such excess property in accordance with § 102–36.45(d). When such property is no longer required by the nonappropriated fund activity, you must reuse or dispose of the property in accordance with this part.

§ 102–36.170 May we transfer personal property owned by one of our nonappropriated fund activities?

Property purchased by a nonappropriated fund activity is not Federal property. A nonappropriated fund activity has the option of making its

privately owned personal property available for transfer to a Federal agency, usually with reimbursement. If such reimbursable personal property is not transferred to another Federal agency, it may be offered for sale. Such property is not available for donation.

[65 FR 31218, May 16, 2000, as amended at 65 FR 33778, May 25, 2000]

CONTRACTORS

§ 102–36.175 Are there restrictions to acquiring excess personal property for use by our contractors?

Yes, you may acquire and furnish excess personal property for use by your contractors subject to the criteria and restrictions in the Federal Acquisition Regulation (48 CFR part 45). When such property is no longer needed by your contractors or your agency, you must dispose of the excess personal property in accordance with the provisions of this part.

COOPERATIVES

§ 102–36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperatives?

Yes, you must limit the total dollar amount of property transfers (in terms of original acquisition cost) to the dollar value of the cooperative agreement. For any transfers in excess of such amount, you must ensure that an official of your agency at a level higher than the officer administering the agreement approves the transfer. The Federal Government retains title to such property, except when provided by specific statutory authority.

PROJECT GRANTEES

§ 102–36.185 What are the requirements for acquiring excess personal property for use by our grantees?

You may furnish excess personal property for use by your grantees only when:

(a) The grantee holds a Federally sponsored project grant;

(b) The grantee is a public agency or a nonprofit tax-exempt organization under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(c) The property is for use in connection with the grant; and

(d) You pay 25 percent of the original acquisition cost of the excess personal property, such funds to be deposited into the miscellaneous receipts fund of the U.S. Treasury. Exceptions to paying this 25 percent are provided in § 102–36.190. Title to property vests in the grantee when your agency pays 25 percent of the original acquisition cost.

§ 102–36.190 Must we always pay 25 percent of the original acquisition cost when furnishing excess personal property to project grantees?

No, you may acquire excess personal property for use by a project grantee without paying the 25 percent fee when any of the following conditions apply:

(a) The personal property was originally acquired from excess sources by your agency and has been placed into official use by your agency for at least one year. The Federal Government retains title to such property.

(b) The property is furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative State forest fire control programs. The Federal Government retains title to such property.

(c) The property is furnished by the U.S. Department of Agriculture to State or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E). The Federal Government retains title to such property.

(d) The property is not needed for donation under part 101–44 of this title, and is transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358). Title to such property transfers to the grantee. (You need not wait until after the donation screening period when furnishing excess personal property to recipients under the Agency for International Development (AID) Development Loan Program.)

(e) The property is scientific equipment transferred under section 11(e) of the National Science Foundation (NSF) Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will limit such transfers to property within Federal Supply

Classification (FSC) groups 12, 14, 43, 48, 58, 59, 65, 66, 67, 68 and 70. GSA may approve transfers without reimbursement for property under other FSC groups when NSF certifies the item is a component of or related to a piece of scientific equipment or is a difficult-to-acquire item needed for scientific research. Regardless of FSC, GSA will not approve transfers of common-use or general-purpose items without reimbursement. Title to such property transfers to the grantee.

(f) The property is furnished in connection with grants to Indian tribes, as defined in section 3(c) of the Indian Financing Act (24 U.S.C. 1452(c)). Title passage is determined under the authorities of the administering agency.

§ 102–36.195 What type of excess personal property may we furnish to our project grantees?

You may furnish to your project grantees any property, except for consumable items, determined to be necessary and usable for the purpose of the grant. Consumable items are generally not transferable to project grantees. GSA may approve transfers of excess consumable items when adequate justification for the transfer accompanies such requests. For the purpose of this section ''consumable items'' are items which are intended for one-time use and are actually consumed in that one time; *e.g.*, drugs, medicines, surgical dressings, cleaning and preserving materials, and fuels.

§ 102–36.200 May we acquire excess personal property for cannibalization purposes by the grantees?

Yes, subject to GSA approval, you may acquire excess personal property for cannibalization purposes. You may be required to provide a supporting statement that indicates disassembly of the item for secondary use has greater benefit than utilization of the item in its existing form and cost savings to the Government will result.

§ 102–36.205 Is there a limit to how much excess personal property we may furnish to our grantees?

Yes, you must monitor transfers of excess personal property so the total dollar amount of property transferred (in original acquisition cost) does not exceed the dollar value of the grant. Any transfers above the grant amount must be approved by an official at an administrative level higher than the officer administering the grant.

Subpart D—Disposition of Excess Personal Property

§ 102–36.210 Why must we report excess personal property to GSA?

You must report excess personal property to promote reuse by the Government to enable Federal agencies to benefit from the continued use of property already paid for with taxpayers' money, thus minimizing new procurement costs. Reporting excess personal property to GSA helps assure that the information on available excess personal property is accessible and disseminated to the widest range of reuse customers.

REPORTING EXCESS PERSONAL PROPERTY

§ 102–36.215 How do we report excess personal property?

Report excess personal property as follows:

(a) Electronically submit the data elements required on the Standard Form 120 (SF 120), Report of Excess Personal Property, in a format specified and approved by GSA; or

(b) Submit a paper SF 120 to the regional GSA Personal Property Management office.

§ 102–36.220 Must we report all excess personal property to GSA?

(a) Generally yes, regardless of the condition code, except as authorized in § 102–36.145 for direct transfers or as exempted in paragraph (b) of this section. Report all excess personal property, including excess personal property to which the Government holds title but is in the custody of your contractors, cooperatives, or project grantees.

(b) You are not required to report the following types of excess personal property to GSA for screening:

(1) Property determined appropriate for abandonment/destruction (see § 102–36.305).

(2) Nonappropriated fund property (see § 102–36.165).

(3) Foreign excess personal property (see § 102–36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste.

(8) Controlled substances.

(9) Nuclear Regulatory Commission-controlled materials.

(10) Property dangerous to public health and safety.

(11) Classified items or property determined to be sensitive for reasons of national security.

(c) Refer to part 101–42 of this title for additional guidance on the disposition of classes of property under paragraphs (b)(7) through (b)(11) of this section.

§ 102–36.225 Must we report excess related personal property?

Yes, you must report excess related personal property to the Office of Real Property, GSA, in accordance with part 101–47 of this title.

§ 102–36.230 Where do we send the reports of excess personal property?

(a) You must direct electronic submissions of excess personal property to the Federal Disposal System (FEDS) maintained by the Property Management Division (FBP), GSA, Washington, DC 20406.

(b) For paper submissions, you must send the SF 120 to the regional GSA Personal Property Management office for the region in which the property is located. For the categories of property listed in § 102–36.125(b), forward the SF 120 to the corresponding regions.

§ 102–36.235 What information do we provide when reporting excess personal property?

(a) You must provide the following data on excess personal property:

(1) The reporting agency and the property location.

(2) A report number (6-digit activity address code and 4-digit Julian date).

(3) 4-digit Federal Supply Class (use National Stock Number whenever available).

(4) Description of item, in sufficient detail.

(5) Quantity and unit of issue.

(6) Disposal Condition Code (see § 102–36.240).

(7) Original acquisition cost per unit and total cost (use estimate if original cost not available).

(8) Manufacturer, date of manufacture, part and serial number, when required by GSA.

(b) In addition, provide the following information on your report of excess, when applicable:

(1) Major parts/components that are missing.

(2) If repairs are needed, the type of repairs.

(3) Special requirements for handling, storage, or transportation.

(4) The required date of removal due to moving or space restrictions.

(5) If reimbursement is required, the authority under which the reimbursement is requested, the amount of reimbursement and the appropriate fund code to which money is to be deposited.

(6) If you will conduct the sale of personal property that is not transferred or donated.

§ 102–36.240 What are the disposal condition codes?

The disposal condition codes are contained in the following table:

Disposal condition code	Definition
1	New. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.
4	Usable. Property which shows some wear, but can be used without significant repair.
7	Repairable. Property which is unusable in its current condition but can be economically repaired.
X	Salvage. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.
S	Scrap. Property which has no value except for its basic material content.

DISPOSING OF EXCESS PERSONAL PROPERTY

§ 102–36.245 Are we accountable for the personal property that has been reported excess, and who is responsible for the care and handling costs?

Yes, you are accountable for the excess personal property until the time it is picked up by the designated recipient or its agent. You are responsible for all care and handling charges while the excess personal property is going through the screening and disposal process.

§ 102–36.250 Does GSA ever take physical custody of excess personal property?

Generally you retain physical custody of the excess personal property prior to its final disposition. Very rarely GSA may consider accepting physical custody of excess personal property. Under special circumstances, GSA may take custody or may direct the transfer of partial or total custody to other executive agencies, with their consent.

§ 102–36.255 What options do we have when unusual circumstances do not allow adequate time for disposal through GSA?

Contact your regional GSA Personal Property Management office for any existing interagency agreements that would allow you to turn in excess personal property to a Federal facility. You are responsible for any turn-in costs and all costs related to transporting the excess personal property to these facilities.

§ 102–36.260 How do we promote the expeditious transfer of excess personal property?

For expeditious transfer of excess personal property you should:

(a) Provide complete and accurate property descriptions and condition codes on the report of excess to facilitate the selection of usable property by potential users.

(b) Ensure that any available operating manual, parts list, diagram, maintenance log, or other instructional publication is made available with the property at the time of transfer.

(c) Advise the designated recipient of any special requirements for dismantling, shipping/transportation.

(d) When the excess personal property is located at a facility due to be closed, provide advance notice of the scheduled date of closing, and ensure there is sufficient time for screening and removal of property.

§ 102–36.265 What if there are competing requests for the same excess personal property?

(a) GSA will generally approve transfers on a first-come, first-served basis. When more than one Federal agency requests the same item, and the quantity available is not sufficient to meet the demand of all interested agencies, GSA will consider factors such as national defense requirements, emergency needs, avoiding the necessity of a new procurement, energy conservation, transportation costs, and retention of title in the Government. GSA will normally give preference to the agency that will retain title in the Government.

(b) Requests for property for the purpose of cannibalization will normally be subordinate to requests for use of the property in its existing form.

§ 102–36.270 What if a Federal agency requests personal property that is undergoing donation screening or in the sales process?

Prior to final disposition, GSA will consider requests from authorized Federal activities for excess personal property undergoing donation screening or in the sales process. Federal transfers may be authorized prior to removal of the property under a donation or sales action.

§ 102–36.275 May we dispose of excess personal property without GSA approval?

No, you may not dispose of excess personal property without GSA approval except under the following limited situations:

(a) You may transfer to another Federal agency excess personal property that has not yet been reported to GSA, under direct transfer procedures contained in § 102–36.145.

(b) You may dispose of excess personal property that is not required to be reported to GSA (see § 102–36.220(b)).

(c) You may dispose of excess personal property without going through GSA when such disposal is authorized by law.

§ 102–36.280 May we withdraw from the disposal process excess personal property that we have reported to GSA?

Yes, you may withdraw excess personal property from the disposal process, but only with the approval of GSA and to satisfy an internal agency requirement. Property that has been approved for transfer or donation or offered for sale by GSA may be returned to your control with proper justification.

TRANSFERS WITH REIMBURSEMENT

§ 102–36.285 May we charge for personal property transferred to another Federal agency?

(a) When any one of the following conditions applies, you may require and retain reimbursement for the excess personal property from the recipient:

(1) Your agency has the statutory authority to require and retain reimbursement for the property.

(2) You are transferring the property under the exchange/sale authority.

(3) You had originally acquired the property with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue. It is current executive branch policy that working capital fund property shall be transferred without reimbursement.

(4) You or the recipient is the U.S. Postal Service.

(5) You or the recipient is the DC Government.

(6) You or the recipient is a wholly owned or mixed-ownership Government corporation.

(b) You may charge for direct costs you incurred incident to the transfer, such as packing, loading and shipping of the property. The recipient is responsible for such charges unless you waive the amount involved.

(c) You may not charge for overhead or administrative expenses or the costs for care and handling of the property pending disposition.

§ 102–36.290 How much do we charge for excess personal property on a transfer with reimbursement?

(a) You may require reimbursement in an amount up to the fair market value of the property when the transfer involves property meeting conditions in § 102–36.285(a)(1) through (a)(4).

(b) When you or the recipient is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102–36.285(a)(5) and (a)(6)), you may only require fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. A higher fair value may be used if you and the recipient agency agree. Due to special circumstances or the nature of the property, you may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

REPORT OF DISPOSAL ACTIVITY

§ 102–36.295 Is there any reporting requirement on the disposition of excess personal property?

Yes, you must report annually to GSA personal property furnished in any manner in that year to any non-Federal recipients, with respect to property obtained as excess or as property determined to be no longer required for the purposes of the appropriation from which it was purchased. GSA will subsequently submit a summary of these Non-Federal Recipients Reports to Congress.

§ 102–36.300 How do we report the furnishing of personal property to non-Federal recipients?

(a) Submit your annual report of personal property furnished to non-Federal recipients, in letter form, to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW, Washington, DC 20405, within 90 calendar days after the close of each fiscal

year. The report must cover personal property disposed during the fiscal year in all areas within the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. Negative reports are required.

(b) The report (interagency report control number 0154—GSA—AN) must reference this part and contain the following:

(1) Names of the non-Federal recipients.

(2) Status of the recipients (contractor, cooperative, project grantee, etc.).

(3) Total original acquisition cost of excess personal property furnished to each type of recipient, by type of property (two-digit FSC groups).

ABANDONMENT/DESTRUCTION

§ 102–36.305 May we abandon or destroy excess personal property without reporting it to GSA?

Yes, you may abandon or destroy excess personal property when you have made a written determination that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap).

§ 102–36.310 Who makes the determination to abandon or destroy excess personal property?

To abandon or destroy excess personal property, an authorized official of your agency makes a written finding that must be approved by a reviewing official who is not directly accountable for the property.

§ 102–36.315 Are there any restrictions to the use of the abandonment/destruction authority?

Yes, the following restrictions apply:

(a) You must not abandon or destroy property in a manner which is detrimental or dangerous to public health or safety. Additional guidelines for the abandonment/destruction of hazardous materials are prescribed in part 101–42 of this title.

(b) If you become aware of an interest from an entity in purchasing the property, you must implement sales procedures in lieu of abandonment/destruction.

§ 102–36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?

In lieu of abandonment/destruction, you may donate such excess personal property only to a public body without going through GSA. A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government. If you become aware of an interest from an eligible nonprofit organization (see part 101–44 of this title) that is not a public body in acquiring the property, you must contact the regional GSA Personal Property Management office and implement donation procedures in accordance with part 101–44 of this title.

§ 102–36.325 What must be done before the abandonment/destruction of excess personal property?

Except as provided in § 102–36.330, you must provide public notice of intent to abandon or destroy excess personal property, in a format and timeframe specified by your agency regulations (such as publishing a notice in a local newspaper, posting of signs in common use facilities available to the public, or providing bulletins on your website through the internet). You must also include in the notice an offer to sell in accordance with part 101–45 of this title.

§ 102–36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?

Yes, you are not required to provide public notice when:

(a) The value of the property is so little or the cost of its care and handling, pending abandonment/destruction, is so great that its retention for advertising for sale, even as scrap, is clearly not economical;

(b) Abandonment or destruction is required because of health, safety, or security reasons; or

(c) When the original acquisition cost of the item (estimated if unknown) is less than $500.

[65 FR 31218, May 16, 2000, as amended at 65 FR 34983, June 1, 2000]

Subpart E—Personal Property Whose Disposal Requires Special Handling

§ 102–36.335 Are there certain types of excess personal property that must be disposed of differently from normal disposal procedures?

Yes, you must comply with the additional provisions in this subpart when disposing of the types of personal property listed in this subpart.

AIRCRAFT AND AIRCRAFT PARTS

§ 102–36.340 What must we do when disposing of excess aircraft?

(a) You must report to GSA all excess aircraft, regardless of condition or dollar value, and provide the following information on the SF 120:

(1) Manufacturer, date of manufacture, model, serial number.

(2) Major components missing from the aircraft (such as engines, electronics).

(3) Whether or not the:

(i) Aircraft is operational;

(ii) Dataplate is available;

(iii) Historical and maintenance records are available;

(iv) Aircraft has been previously certificated by the Federal Aviation Administration (FAA) and/or has been maintained to FAA airworthiness standards;

(v) Aircraft was previously used for non-flight purposes (*i.e.*, ground training or static display), and has been subjected to extensive disassembly and reassembly procedures for ground training, or repeated burning for fire-fighting training purposes.

(4) For military aircraft, indicate Category A, B, or C as designated by DOD, as follows:

Category of aircraft	Description
A	Aircraft authorized for sale and exchange for commercial use.
B	Aircraft previously used for ground instruction and/or static display.
C	Aircraft that are combat configured as determined by DOD.

NOTE TO § 102–36.340(A)(4): For additional information on military aircraft see Defense Materiel Disposition Manual, DOD 4160.21-M, accessible at *www.drms.dla.mil* under Publications.

(b) When the designated transfer or donation recipient's intended use is for non-flight purposes, you must remove and return the dataplate to GSA Property Management Branch, San Francisco, California prior to releasing the aircraft to the authorized recipient. GSA will forward the dataplates to FAA.

(c) You must also submit a report of the final disposition of the aircraft to the Federal Aviation Interactive Reporting System (FAIRS) maintained by the Aircraft Management Policy Division (MTA), GSA, 1800 F Street, NW, Washington, DC 20405. For additional instructions on reporting to FAIRS see part 101–37 of this title.

§ 102–36.345 May we dispose of excess Flight Safety Critical Aircraft Parts (FSCAP)?

Yes, you may dispose of excess FSCAP, but first you must determine whether the documentation available is adequate to allow transfer, donation, or sale of the part in accordance with part 101–37, subpart 101–37.6, of this title. Otherwise, you must mutilate undocumented FSCAP that has no traceability to its original equipment manufacturer and dispose of it as scrap. When reporting excess FSCAP, annotate the manufacturer, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120, and ensure that all available historical and maintenance records accompany the part at the time of issue.

§ 102–36.350 How do we identify a FSCAP?

Any aircraft part designated as FSCAP is assigned an alpha Criticality

Code, and the code is annotated on the original transfer document when you acquire the part. You must perpetuate the appropriate FSCAP Criticality Code on all personal property records. You may contact the Federal agency or Military service that originally owned the part for assistance in making this determination, or query DOD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) for the part. For assistance in subscribing to the FLIS service contact the FedLog Consumer Support Office, 800–351–4381.

§ 102–36.355 What are the FSCAP Criticality Codes?

The FSCAP Criticality Codes are contained in the following table:

FSCAP code	Description
E	FSCAP specially designed to be or selected as being nuclear hardened.
F	Flight Safety Critical Aircraft Part.

§ 102–36.360 How do we dispose of aircraft parts that are life-limited but have no FSCAP designation?

When disposing of life-limited aircraft parts that have no FSCAP designation, you must ensure that tags and labels, historical data and maintenance records accompany the part on any transfers, donations or sales. For additional information regarding the disposal of life-limited parts with or without tags or documentation refer to part 101–37 of this title.

CANINES, LAW ENFORCEMENT

§ 102–36.365 May we transfer or donate canines that have been used in the performance of law enforcement duties?

Yes, under Public Law 105–27 (111 Stat. 244), when the canine is no longer needed for law enforcement duties, you may donate the canine to an individual who has experience handling canines in the performance of those official duties.

DISASTER RELIEF PROPERTY

§ 102–36.370 Are there special requirements concerning the use of excess personal property for disaster relief?

Yes, upon declaration by the President of an emergency or a major disaster, you may loan excess personal property to State and local governments, with or without compensation and prior to reporting it as excess to GSA, to alleviate suffering and damage resulting from any emergency or major disaster (Disaster Relief Act of 1974 (Public Law 93–288 (42 U.S.C. 5121)) and Executive Orders 11795 (3 CFR, 1971–1975 Comp., p. 887) and 12148 (3 CFR, 1979 Comp., p. 412), as amended). If the loan involves property that has already been reported excess to GSA, you may withdraw the item from the disposal process subject to approval by GSA. You may also withdraw excess personal property for use by your agency in providing assistance in disaster relief. You are still accountable for this property and your agency is responsible for developing agencywide procedures for recovery of such property.

FIREARMS

§ 102–36.375 May we dispose of excess firearms?

Yes, unless you have specific statutory authority to do otherwise, excess firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. GSA may donate certain classes of surplus firearms to State and local government activities whose primary function is the enforcement of applicable Federal, State, and/or local laws and whose compensated law enforcement officers have the authority to apprehend and arrest. Firearms not transferred or donated must be destroyed and sold as scrap. For additional guidance on the disposition of firearms refer to part 101–42 of this title.

FOREIGN EXCESS PERSONAL PROPERTY

§ 102–36.380 Who is responsible for disposing of foreign excess personal property?

Your agency is responsible for disposing of your foreign excess personal property, as provided by title IV of the Property Act.

§ 102–36.385 What are our responsibilities in the disposal of foreign excess personal property?

When disposing of foreign excess personal property you must:

(a) Determine whether it is in the interest of the U.S. Government to return foreign excess personal property to the U.S. for further re-use or to dispose of the property overseas.

(b) Ensure that any disposal of property overseas conforms to the foreign policy of the United States and the terms and conditions of any applicable Host Nation Agreement.

(c) Ensure that, when foreign excess personal property is donated or sold overseas, donation/sales conditions include a requirement for compliance with U.S. Department of Commerce and Department of Agriculture regulations when transporting any personal property back to the U.S.

(d) Inform the U.S. State Department of any disposal of property to any foreign governments or entities.

§ 102–36.390 How may we dispose of foreign excess personal property?

To dispose of foreign excess personal property, you may:

(a) Offer the property for re-use by U.S. Federal agencies overseas;

(b) Return the property to the U.S. for re-use by eligible recipients;

(c) Sell, exchange, lease, or transfer such property for cash, credit, or other property;

(d) Donate medical materials or supplies to nonprofit medical or health organizations, including those qualified under sections 214(b) and 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2174, 2357); or

(e) Abandon, destroy or donate such property when you determine that it has no commercial value or the estimated cost of care and handling would exceed the estimated proceeds from its sale, in accordance with sec. 402(a) of the Property Act. Abandonment, destruction or donation actions must also comply with the laws of the country in which the property is located.

§ 102–36.395 How may GSA assist us in disposing of foreign excess personal property?

You may request GSA's assistance in the screening of foreign excess personal property for possible re-use by eligible recipients within the U.S. GSA may, after consultation with you, designate property for return to the United States for transfer or donation purposes.

§ 102–36.400 Who pays for the transportation costs when foreign excess personal property is returned to the United States?

When foreign excess property is to be returned to the U.S. for the purpose of an approved transfer or donation under the provisions of Sections 202 and 203 of the Property Act, the receiving agency is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

GIFTS

§ 102–36.405 May we keep gifts given to us from the public?

If your agency has gift retention authority, you may retain gifts from the public. Otherwise, you must report gifts you receive on a SF 120 to GSA. You must report gifts received from a foreign government in accordance with part 101–49 of this title.

§ 102–36.410 How do we dispose of a gift in the form of money or intangible personal property?

Report intangible personal property to GSA, Personal Property Management Division (FBP), Washington, D.C. 20406. You must not transfer or dispose of this property without prior approval of GSA. The Secretary of the Treasury will dispose of money and negotiable instruments such as bonds, notes, or other securities under the authority of 31 U.S.C. 324.

§ 102–36.415 How do we dispose of gifts other than intangible personal property?

(a) When the gift is offered with the condition that the property be sold and the proceeds used to reduce the public debt, report the gift to the regional GSA Personal Property Management office in which the property is located. GSA will convert the gift to money upon acceptance and deposit the proceeds into a special account of the U.S. Treasury.

(b) When the gift is offered with no conditions or restrictions, and your agency has gift retention authority, you may use the gift for an authorized official purpose without reporting to GSA. The property will then lose its identity as a gift and you must account for it in the same manner as Federal personal property acquired from authorized sources. When the property is no longer needed, you must report it as excess personal property to GSA.

(c) When the gift is offered with no conditions or restrictions, but your agency does not have gift retention authority, you must report it to the regional GSA Personal Property Management office. GSA will offer the property for screening for possible transfer to a Federal agency or convert the gift to money and deposit the funds with U.S. Treasury. If your agency is interested in keeping the gift for an official purpose, you must annotate your interest on the SF 120 and also submit a SF 122.

§ 102–36.420 How do we dispose of gifts from foreign governments or entities?

Report foreign gifts on a SF 120 to GSA, Personal Property Management Division (FBP), Washington, DC 20406, for possible use by your agency, or for transfer, donation or sale in accordance with the provisions of part 101–49 of this title.

HAZARDOUS PERSONAL PROPERTY

§ 102–36.425 May we dispose of excess hazardous personal property?

Yes, but only in accordance with part 101–42 of this title. When reporting excess hazardous property to GSA, certify on the SF 120 that the property has been packaged and labeled as required. Annotate any special requirements for handling, storage, or use, and provide a description of the actual or potential hazard.

MUNITIONS LIST ITEMS/COMMERCE CONTROL LIST ITEMS (MLIS/CCLIS)

§ 102–36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?

You may dispose of excess MLIs/CCLIs only when you comply with the additional disposal and demilitarization (DEMIL) requirements contained in part 101–42 of this title. MLIs may require demilitarization when issued to any non-DoD entity, and will require appropriate licensing when exported from the U.S. CCLIs usually require export licensing when transported from the U.S.

§ 102–36.435 How do we identify Munitions List Items (MLIs)/Commerce Control List Items (CCLIs) requiring demilitarization?

You identify MLIs/CCLIs requiring demilitarization by the demilitarization code that is assigned to each MLI or CCLI. The code indicates the type and scope of demilitarization and/or export controls that must be accomplished, when required, before issue to any non-DOD activity. For a listing of the codes and additional guidance on DEMIL procedures see DOD Demilitarization and Trade Security Control Manual, DOD 4160.21–M–1.

PRINTING EQUIPMENT AND SUPPLIES

§ 102–36.440 Are there special procedures for reporting excess printing and binding equipment and supplies?

Yes, in accordance with 44 U.S.C. 312, you must submit reports of excess printing and binding machinery, equipment, materials, and supplies to the Public Printer, Government Printing Office (GPO), Customer Service Manager, North Capitol and H Streets, NW, Washington, DC 20401. If GPO has no requirement for the property, you must then submit the report to GSA.

RED CROSS PROPERTY

§ 102–36.445 Do we report excess personal property originally acquired from or through the American National Red Cross?

Yes, when reporting excess personal property which was processed, produced, or donated by the American National Red Cross, note ''RED CROSS PROPERTY'' on the SF 120 or report document. GSA will offer to return this property to the Red Cross if no other Federal agency has a need for it. If the Red Cross has no requirement the property continues in the disposal process and is available for donation.

SHELF-LIFE ITEMS

§ 102–36.450 Do we report excess shelf-life items?

(a) When there are quantities on hand that would not be utilized by the expiration date and cannot be returned to the vendor for credit, you must report such expected overage as excess for possible transfer and disposal to ensure maximum use prior to deterioration.

(b) You need not report expired shelf-life items. You may dispose of property with expired shelf-life by abandonment/destruction in accordance with § 102–36.305 and in compliance with Federal, State, and local waste disposal and air and water pollution control standards.

§ 102–36.455 How do we report excess shelf-life items?

You must identify the property as shelf-life items by ''SL'', indicate the expiration date, whether the date is the original or an extended date, and if the date is further extendable. GSA may adjust the screening period based on re-use potential and the remaining useful shelf life.

§ 102–36.460 Do we report excess medical shelf-life items held for national emergency purposes?

When the remaining shelf life of any medical materials or supplies held for national emergency purposes is of too short a period to justify their continued retention, you should report such property excess for possible transfer and disposal. You must make such excess determinations at such time as to ensure that sufficient time remains to permit their use before their shelf life expires and the items are unfit for human use. You must identify such items with ''MSL'' and the expiration date, and indicate any specialized storage requirements.

§ 102–36.465 May we transfer or exchange excess medical shelf-life items with other Federal agencies?

Yes, you may transfer or exchange excess medical shelf-life items held for national emergency purposes with any other Federal agency for other medical materials or supplies, without GSA approval and without regard to part 101–46 of this title. You and the transferee agency will agree to the terms and prices. You may credit any proceeds derived from such transactions to your agency's current applicable appropriation and use the funds only for the purchase of medical materials or supplies for national emergency purposes.

VESSELS

§ 102–36.470 What must we do when disposing of excess vessels?

(a) When you dispose of excess vessels you must indicate on the SF 120 the following information:

(1) Whether the vessel has been inspected by the Coast Guard.

(2) Whether testing for hazardous materials has been done. And if so, the result of the testing, specifically the presence or absence of PCB's and asbestos and level of contamination.

(3) Whether hazardous materials clean-up is required, and when it will be accomplished by your agency.

(b) In accordance with section 203(i) of the Property Act, the Federal Maritime Administration (FMA), Department of Transportation, is responsible for disposing of surplus vessels determined to be merchant vessels or capable of conversion to merchant use and weighing 1,500 gross tons or more. The SF 120 for such vessels shall be forwarded to GSA for submission to FMA.

(c) Disposal instructions regarding vessels in this part do not apply to battleships, cruisers, aircraft carriers, destroyers, and submarines.

Subpart F—Miscellaneous Disposition

§ 102–36.475 What is the authority for transfers under "Computers for Learning"?

(a) The Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)), authorizes Federal agencies to transfer excess education-related Federal equipment to educational institutions or non-profit organizations for educational and research activities. Executive Order 12999 (3 CFR, 1996 Comp., p. 180) requires, to the extent permitted by law and where appropriate, the transfer of computer equipment for use by schools or non-profit organizations.

(b) Each Federal agency is required to identify a point of contact within the agency to assist eligible recipients, and to publicize the availability of such property to eligible communities. Excess education-related equipment may be transferred directly under established agency procedures, or reported to GSA as excess for subsequent transfer to potential eligible recipients as appropriate. You must include transfers under this authority in the annual Non-Federal Recipients Report (See § 102–36.295) to GSA.

(c) The ''Computers for Learning'' website has been developed to streamline the transfer of excess and surplus Federal computer equipment to schools and nonprofit educational organizations. For additional information about this program access the ''Computers for Learning'' website, http://www.computers.fed.gov.

PARTS 102–37—102–41 [RESERVED]

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

Subpart A—General Provisions

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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?
102–42.140 How is a sale of a foreign gift or decoration to an employee conducted?
102–42.145 When is public sale of a foreign gift or decoration authorized?
102–42.150 What happens to proceeds from sales?
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).

SOURCE: 65 FR 45539, July 24, 2000, unless otherwise noted.

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.
(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.

Entry	Description
(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.

SUBCHAPTER C—REAL PROPERTY

PART 102–71—GENERAL

Sec.
102–71.5 What are the scope and philosophy of the General Services Administration's (GSA) real property policies?
102–71.10 How are these policies organized?
102–71.15 What happens if the policy statements in this part and parts 102–72 through 102–82 of this chapter conflict with policy statements in 41 CFR parts 101–6, 101–17 through 101–20, 101–33, and 101–47?
102–71.20 What definitions apply to GSA's real property policies?
102–71.25 Who must comply with GSA's real property policies?
102–71.30 How must these real property policies be implemented?
102–71.35 Are agencies allowed to deviate from GSA's real property policies?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–71.5 What are the scope and philosophy of the General Services Administration's (GSA) real property policies?

GSA's real property policies contained in this part and parts 102–72 through 102–82 of this chapter apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. These policies cover the acquisition, management, and utilization and disposal of real property by Federal agencies that initiate and have decisionmaking authority over actions for real property services. The detailed guidance implementing these policies is contained in separate customer service guides.

§ 102–71.10 How are these policies organized?

GSA has divided its real property policies into the following functional areas:

(a) Delegation of authority;
(b) Real estate acquisition;
(c) Facility management;
(d) Real property disposal;
(e) Design and construction;
(f) Art-in-architecture;
(g) Historic preservation;
(h) Assignment and utilization of space;
(i) Safety and environmental management;
(j) Security; and
(k) Utility services.

§ 102–71.15 What happens if the policy statements in this part and parts 102–72 through 102–82 of this chapter conflict with policy statements in 41 CFR parts 101–6, 101–17 through 101–20, 101–33, and 101–47?

The policies in this part and parts 102–72 through 102–82 of this chapter apply to 41 CFR parts 101–17 through 101–20, 101–33, and 101–47. To the extent that any policy statements elsewhere in 41 CFR parts 101–17 through 101–20, 101–33, and 101–47 are inconsistent with the policy statements in this part and parts 102–72 through 102–82 of this chapter, the policy statements in this chapter are controlling.

§ 102–71.20 What definitions apply to GSA's real property policies?

The following definitions apply to GSA's real property policies:

Executive agency means any Executive department or independent establishment in the Executive branch of the Government, including any wholly owned Government corporation.

Federal agency means any Executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction).

Federal Government real property services provider means any Federal Government entity operating under, or subject to, the authorities of the Administrator of General Services, that provides real property services to Federal agencies. This definition also includes private sector firms under contract with Federal agencies that deliver real property services to Federal agencies. This definition excludes any entity operating under, or subject to, authorities other than those of the Administrator of General Services.

Public building means:

(1) Any building which is suitable for office and/or storage space for the use of one or more Federal agencies or mixed ownership corporations, such as Federal office buildings, post offices, customhouses, courthouses, border inspection facilities, warehouses, and any such building designated by the President. It also includes buildings of this sort that are acquired by the Federal Government under the Administrator's installment-purchase, lease-purchase, and purchase-contract authorities.

(2) *Public building* does not include buildings:

(i) On the public domain.

(ii) In foreign countries.

(iii) On Indian and native Eskimo properties held in trust by the United States.

(iv) On lands used in connection with Federal programs for agricultural, recreational, and conservation purposes.

(v) On or used in connection with river, harbor, flood control, reclamation or power projects, or for chemical manufacturing or development projects, or for nuclear production, research, or development projects.

(vi) On or used in connection with housing and residential projects.

(vii) On military installations.

(viii) On Department of Veteran's Affairs' installations used for hospital or domiciliary purposes.

(ix) Excluded by the President.

§ 102–71.25 Who must comply with GSA's real property policies?

Federal agencies operating under, or subject to, the authorities of the Administrator of General Services must comply with these policies.

§ 102–71.30 How must these real property policies be implemented?

Each Federal Government real property services provider must provide services that are in accord with the policies presented in parts 102–71 through 102–82 of this chapter. Also, Federal agencies must make the provisions of any contract with private sector real property services providers conform to the policies in parts 102–71 through 102–82 of this chapter.

§ 102–71.35 Are agencies allowed to deviate from GSA's real property policies?

Yes, see §§102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of these real property policies.

PART 102–72—DELEGATION OF AUTHORITY

Sec.

102–72.5 What is the scope of this part?
102–72.10 What basic policy governs delegation of authority to Federal agencies?
102–72.15 What criteria must a delegation meet?
102–72.20 Are there limitations on this delegation of authority?
102–72.25 What are the different types of delegations of authority?
102–72.30 What are the different types of delegations related to real estate leasing?
102–72.35 What are the requirements for obtaining an ACO delegation from GSA?
102–72.40 What are facility management delegations?
102–72.45 What are the different types of delegations related to facility management?
102–72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?
102–72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?
102–72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?
102–72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?
102–72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?
102–72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?
102–72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?
102–72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?
102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?
102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?
102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

AUTHORITY: 40 U.S.C. 486(c), (d) and (e).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–72.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–72.10 What basic policy governs delegation of authority to Federal agencies?

The Administrator of General Services may delegate and may authorize successive redelegations of the real property authority vested in the Administrator to any Federal agency.

§ 102–72.15 What criteria must a delegation meet?

Delegations must be in the Government's best interest, which means that GSA must evaluate such factors as whether a delegation would be cost effective for the Government in the delivery of space.

§ 102–72.20 Are there limitations on this delegation of authority?

Federal agencies must exercise delegated real property authority and functions according to the parameters described in each delegation of authority document, and Federal agencies may only exercise the authority of the Administrator that is specifically provided within the delegation of authority document.

§ 102–72.25 What are the different types of delegations of authority?

The basic types of GSA Delegations of Authority are:

(a) Delegation of Leasing Authority;

(b) Delegation of Real Property Management and Operation Authority;

(c) Delegation of Individual Repair and Alteration Project Authority;

(d) Delegation of Lease Management Authority (Contracting Office Representative Authority);

(e) Delegation of Administrative Contracting Officer (ACO) Authority;

(f) Delegation of Real Property Disposal Authority;

(g) Security Delegation of Authority; and

(h) Utility Services Delegation of Authority.

§ 102–72.30 What are the different types of delegations related to real estate leasing?

Delegations related to real estate leasing include the following:

(a) Categorical space delegations, Agency special purpose space delegations, and delegations to specific agencies for certain space and lands outside urban areas (see § 101–18.104 of this title).

(b) The Administrator of General Services has issued a standing delegation of authority (under a program known as ''Can't Beat GSA Leasing'') to the heads of all Federal agencies to accomplish all functions relating to leasing of general purpose space for terms of up to 20 years regardless of geographic location. This delegation includes some conditions Federal agencies must meet when conducting the procurement themselves, such as training in lease contracting and reporting data to GSA.

(c) An Administrative Contracting Officer (ACO) delegation, in addition to lease management authority, provides Federal agencies with limited contracting officer authority to perform such duties as paying and withholding lessor rent and modifying lease provisions that don't change the lease term length or the amount of space under lease.

§ 102–72.35 What are the requirements for obtaining an ACO delegation from GSA?

When Federal agencies don't exercise the delegation of authority for general purpose space mentioned in § 102–72.30(b), GSA may consider granting an ACO delegation when Federal agencies:

(a) Occupy at least 90 percent of the building's GSA-controlled space or

Federal agencies have the written concurrence of 100 percent of rent-paying occupants covered under the lease; and

(b) Have the technical capability to perform the leasing function.

§ 102–72.40 What are facility management delegations?

Facility management delegations give Executive agencies authority to operate and manage buildings day to day, to perform individual repair and alteration projects and manage real property leases.

§ 102–72.45 What are the different types of delegations related to facility management?

The principal types of delegations involved in the management of facilities are:

(a) Real property management and operation authority;

(b) Individual repair and alteration project authority; and

(c) Lease management authority (contracting officer representative authority).

§ 102–72.50 What are Executive agencies' responsibilities under a delegation of real property management and operation authority from GSA?

With this delegation, Executive agencies have the authority to operate and manage buildings day to day. Delegated functions may include building operations, maintenance, recurring repairs, minor alterations, historic preservation, concessions, and energy management of specified buildings subject to the conditions in the delegation document.

§ 102–72.55 What are the requirements for obtaining a delegation of real property management and operation authority from GSA?

An Executive agency may be delegated real property management and operation authority when it:

(a) Occupies at least 90 percent of the space in the Government-controlled facility or has the concurrence of 100 percent of the rent-paying occupants to perform these functions; and

(b) Demonstrates that it can perform the delegated real property management and operation responsibilities.

§ 102–72.60 What are Executive agencies' responsibilities under a delegation of individual repair and alteration project authority from GSA?

With this delegation of authority, Executive agencies have the responsibility to perform individual repair and alterations projects. Executive agencies are delegated repair and alterations authority for reimbursable space alteration projects up to the simplified acquisition threshold, under § 101–20.106 of this title.

§ 102–72.65 What are the requirements for obtaining a delegation of individual repair and alteration project authority from GSA?

Executive agencies may be delegated repair and alterations authority for other individual alteration projects when they demonstrate the ability to perform the delegated repair and alterations responsibilities and when such a delegation promotes efficiency and economy.

§ 102–72.70 What are Executive agencies' responsibilities under a delegation of lease management authority (contracting officer representative authority) from GSA?

When an Executive agency does not exercise the delegation of authority mentioned in § 102–72.30(b) to lease general purpose space itself, it may be delegated, upon request, lease management authority to manage the administration of one or more lease contracts awarded by GSA.

§ 102–72.75 What are the requirements for obtaining a delegation of lease management authority (contracting officer representative authority) from GSA?

An Executive agency may be delegated lease management authority when it:

(a) Occupies at least 90 percent of the building's GSA-controlled space or has the written concurrence of 100 percent of rent-paying occupants covered under the lease to perform this function; and

(b) Demonstrates the ability to perform the delegated lease management responsibilities.

§ 102–72.80 What are Executive agencies' responsibilities under a disposal of real property delegation of authority from GSA?

With this delegation, Executive agencies have the authority to utilize and dispose of excess or surplus real and related personal property and to grant approvals and make determinations subject to the conditions in the delegation document.

§ 102–72.85 What are the requirements for obtaining a disposal of real property delegation of authority from GSA?

While disposal delegations to Executive agencies are infrequent, GSA may delegate authority to them based on situations involving certain low-value properties and when they can demonstrate that they have the technical expertise to perform the disposition functions. GSA may grant special delegations of authority to Executive agencies for the utilization and disposal of certain real property through the procedures set forth in part 101–47, subpart 101–47.6, of this title.

§ 102–72.90 What are Executive agencies' responsibilities under a security delegation of authority from GSA?

With a security delegation, Executive agencies have the authority and responsibility to protect persons and property at the locations identified in the delegation document.

§ 102–72.95 What are the requirements for obtaining a security delegation of authority from GSA?

Executive agencies may be delegated security authority when any of the following conditions exist:

(a) A clear and unique security requirement;

(b) A critical national security issue;

(c) An intelligence or law enforcement mission; or

(d) The current security contractor is ineffective.

§ 102–72.100 What are Executive agencies' responsibilities under a utility service delegation of authority from GSA?

With this delegation, Executive agencies have the authority to negotiate and execute utility services contracts for periods over one year but not exceeding ten years for their use and benefit. Agencies also have the authority to intervene in utility rate proceedings to represent the consumer interests of the Federal Government, if so provided in the delegation of authority.

§ 102–72.105 What are the requirements for obtaining a utility services delegation of authority from GSA?

Executive agencies may be delegated utility services authority when they have the technical expertise and adequate staffing.

PART 102–73—REAL ESTATE ACQUISITION

Sec.

102–73.5 What is the scope of this part?
102–73.10 What is the basic real estate acquisition policy?
102–73.15 What real estate acquisition and related services must Federal agencies provide?
102–73.20 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?
102–73.25 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?
102–73.30 On what basis must Federal agencies acquire leases?
102–73.35 Are Executive agencies required to acquire leased space by negotiation?
102–73.40 Is the CICA applicable to lease acquisition?
102–73.45 What policy must Executive agencies comply with in locating Federal facilities?
102–73.50 What historic preservation provisions must Federal agencies comply with when acquiring space by lease?
102–73.55 With whom may Federal agencies enter into lease agreements?
102–73.60 Are there any limitations on leasing certain space?
102–73.65 When may Federal agencies consider acquiring leases with purchase options?
102–73.70 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?
102–73.75 When may Federal agencies consider purchase of buildings?
102–73.80 What factors must Executive agencies consider when purchasing sites?
102–73.85 What land acquisition policy must Federal agencies follow?

102–73.90 What relocation assistance policy must Federal agencies follow?
102–73.95 Is a prospectus required for all acquisition, construction or alteration projects?
102–73.100 What happens if the project exceeds the prospectus threshold?

AUTHORITY: 40 U.S.C. 486(c); Sec. 3(c), Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note); Sec. 1–201(b), E.O. 12072, 43 FR 36869, 3 CFR, 1978 Comp., p. 213.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–73.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–73.10 What is the basic real estate acquisition policy?

If suitable Government-controlled space is unavailable, Executive agencies must acquire real estate and related services in an efficient and cost effective manner.

§ 102–73.15 What real estate acquisition and related services must Federal agencies provide?

Federal agencies, upon approval from GSA, may provide real estate and related services, including leases (with and without purchase options), building purchase, purchase of sites, condemnation, and relocation assistance.

§ 102–73.20 When may Federal agencies consider leases of privately owned land and buildings to satisfy their space needs?

Federal agencies may consider leases of privately owned land and buildings only when needs cannot be satisfactorily met in Government-controlled space and one or more of the following conditions exist:

(a) Leasing is more advantageous to the Government than constructing a new building, or more advantageous than altering an existing Federal building;

(b) New construction or alteration is unwarranted because demand for space in the community is insufficient, or is indefinite in scope or duration; or

(c) Federal agencies cannot provide for the completion of a new building within a reasonable time.

§ 102–73.25 Are Federal agencies required to give priority consideration to space in buildings under the custody and control of the United States Postal Service in fulfilling Federal agency space needs?

Yes, after considering the availability of GSA-controlled space, Federal agencies must extend priority consideration to available space in buildings under the custody and control of the United States Postal Service (USPS) in fulfilling Federal agency space needs.

§ 102–73.30 On what basis must Federal agencies acquire leases?

Federal agencies must acquire leases on the most favorable basis to the Federal Government, with due consideration to maintenance and operational efficiency, and at charges consistent with prevailing market rates for comparable facilities in the community.

§ 102–73.35 Are Executive agencies required to acquire leased space by negotiation?

Yes, Executive agencies must acquire leased space by negotiation, except where the sealed bid procedure is required by the Competition in Contracting Act of 1984 (CICA), as amended (41 U.S.C. 253(a)). See also 40 U.S.C. 618(b) with respect to the use of competitive procedures for the acquisition of leaseholds in buildings constructed for Federal Government use.

§ 102–73.40 Is the CICA applicable to lease acquisition?

Yes, Executive agencies must obtain full and open competition among suitable locations meeting minimum Government requirements, except as otherwise provided by CICA.

§ 102–73.45 What policy must Executive agencies comply with in locating Federal facilities?

When acquiring space by lease, Executive agencies must comply with the location policies in § 101–17.205 and § 102–79.90 (E.O. 13006 (61 FR 26071, 3 CFR, 1996 Comp., p. 195)) of this title.

§ 102–73.50 What historic preservation provisions must Federal agencies comply with when acquiring space by lease?

When acquiring space by lease, Federal agencies must comply with the provisions of section 110(a) of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470h–2(a)), regarding the use of historic properties.

§ 102–73.55 With whom may Federal agencies enter into lease agreements?

Federal agencies, upon approval from GSA, may enter into lease agreements with any person, copartnership, corporation, or other public or private entity, which do not bind the Government for periods in excess of twenty years (40 U.S.C. 490(h)(1)). This policy does not include persons who might otherwise be barred from contracting with the Federal Government (*e.g.*, debarred or suspended contractors or Members of Congress).

§ 102–73.60 Are there any limitations on leasing certain space?

Yes, the limitations on leasing certain space are as follows:

(a) In general, Federal agencies may not lease any space to accommodate computer and telecommunications operations; secure or sensitive activities related to the national defense or security; or a permanent courtroom, judicial chamber, or administrative office for any United States court, if the average annual net rental cost of leasing such space would exceed the prospectus threshold (40 U.S.C. 606(e)).

(b) Federal agencies may lease such space only if the Administrator of General Services first determines that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives in accordance with 40 U.S.C. 606(e).

§ 102–73.65 When may Federal agencies consider acquiring leases with purchase options?

Agencies may consider leasing with a purchase option at or below fair market value when one or more of the following conditions exist:

(a) The purchase option offers economic and other advantages to the Government and is consistent with the Government's goals;

(b) The Government is the sole or major tenant of the building, and has a long-term need for the property; or

(c) Leasing with a purchase option is otherwise in the best interest of the Government.

§ 102–73.70 What scoring rules must Federal agencies follow when considering leases and leases with purchase options?

All Federal agencies must follow the budget scorekeeping rules for leases, capital leases, and lease-purchases identified in appendices A and B of OMB Circular A–11 (For availability, see 5 CFR 1310.3).

§ 102–73.75 When may Federal agencies consider purchase of buildings?

Agencies may consider purchase of buildings on a case-by-case basis when one or more of the following conditions exist:

(a) It is economically more beneficial to own and manage the property;

(b) There is a long-term need for the property;

(c) The property is an existing building, or a building nearing completion, that can be purchased and occupied within a reasonable time; or

(d) When otherwise in the best interests of the Government.

§ 102–73.80 What factors must Executive agencies consider when purchasing sites?

Agencies must locate proposed Federal buildings on sites that are most advantageous to the United States. Executive agencies must consider factors such as whether the site will contribute to economy and efficiency in the construction, maintenance and operation of the individual building, and how the proposed site relates to the

Government's total space needs in the community. Prior to acquiring, constructing or leasing buildings (or sites for such buildings), Federal agencies must use, to the maximum extent feasible, historic properties available to the agency. In site selections, Executive agencies must consider Executive Orders 12072 (3 CFR, 1978 Comp., p. 213) and 13006 (40 U.S.C. 601a note). In addition, Executive agencies must consider all of the following:

(a) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located, where such use is consistent with the provisions of part 101–47, subpart 101–47.8, of this title.

(b) A site adjacent to or in the proximity of an existing Federal building which is well located and is to be retained for long-term occupancy.

(c) The environmental condition of proposed sites prior to purchase: The sites must be free from contamination, unless it is otherwise determined to be in the best interests of the Government to purchase a contaminated site (*e.g.*, reuse of a site under an established ''Brownsfields'' program).

(d) Purchase options to secure the future availability of a site.

(e) All applicable policies concerning the location of Federal facilities (*e.g.*, to give first priority to locating facilities in rural areas under the Rural Development Act (7 U.S.C. 2204b–1)).

§ 102–73.85 What land acquisition policy must Federal agencies follow?

Federal agencies must follow a land acquisition policy that:

(a) Encourages and expedites the acquisition of real property by agreements with owners;

(b) Avoids litigation, including condemnation actions, where possible and relieves congestion in the courts;

(c) Provides for consistent treatment of owners; and

(d) Promotes public confidence in Federal land acquisition practices.

§ 102–73.90 What relocation assistance policy must Federal agencies follow?

Federal agencies, upon approval from GSA, must provide appropriate relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4651–4655) to eligible owners and tenants of property purchased for use by Federal agencies. Appropriate relocation assistance means that the Federal agency must pay the displaced person for actual reasonable moving expenses (in moving himself, his family, business, etc.); actual direct losses of tangible personal property as a result of moving or discontinuing a business; actual reasonable expenses in searching for a replacement business or farm; and actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed $10,000. The implementing regulations are found in 49 CFR part 24 (see § 105–51.000 of this title).

§ 102–73.95 Is a prospectus required for all acquisition, construction or alteration projects?

(a) No, a prospectus is not required if the dollar value of a project does not exceed the prospectus threshold. The Public Buildings Act of 1959, as amended, 40 U.S.C. 601–619, establishes a prospectus threshold, applicable to Federal agencies operating under, or subject to, the authorities of the Administrator of General Services, for the construction, alteration, purchase, and acquisition of any building to be used as a public building, and establishes a prospectus threshold to lease any space for use for public purposes. (Because of the important role the prospectus approval process plays in the budget preparation and planning process and with Congressional oversight responsibilities, Federal agencies must continue to prepare and submit prospectuses for all projects that exceed the prospectus threshold identified in § 102–73.55. All GSA delegations of leasing, alteration, and construction authority are subject to this policy.)

(b) Public Law 104–66, 109 Stat. 734, eliminated the prospectus submission requirement of the Public Buildings Act of 1959 (40 U.S.C. 606(a) and 610(b)).

§ 102–73.100 What happens if the project exceeds the prospectus threshold?

Such projects require approval by the Senate and the House of Representatives if the dollar value exceeds the prospectus threshold. In order to obtain this approval, prospectuses for such projects must be submitted to GSA and the Administrator of General Services will transmit the proposed prospectuses to Congress for consideration by the Senate and the House of Representatives.

PART 102–74—FACILITY MANAGEMENT

Sec.

102–74.5 What is the scope of this part?
102–74.10 What is the basic facility management policy?
102–74.15 What are occupancy services?
102–74.20 What responsibilities do Executive agencies have regarding occupancy services?
102–74.25 What standard in providing occupancy services must Executive agencies follow?
102–74.30 What building services must Executive agencies provide?
102–74.35 What are concessions services?
102–74.40 When must Federal agencies provide concessions services?
102–74.45 Are Federal agencies required to give blind vendors priority in operating vending facilities?
102–74.50 What are conservation programs?
102–74.55 What are asset services?
102–74.60 What asset services must Executive agencies provide?
102–74.65 What standard in providing asset services must Executive agencies follow?
102–74.70 What Federal facility ridesharing policy must Executive agencies follow?
102–74.75 What steps must Executive agencies take to promote ridesharing at Federal facilities?
102–74.80 What specific ridesharing information must Executive agencies report to the Administrator of General Services?
102–74.85 Where should Executive agencies send their Federal Facility Ridesharing Reports?
102–74.90 Are there any exceptions to these ridesharing reporting requirements?

AUTHORITY: 40 U.S.C. 486(c); E.O. 12191, 45 FR 7997, 3 CFR, 1980 Comp., p 138.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–74.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–74.10 What is the basic facility management policy?

Executive agencies must manage, operate, and maintain Government-owned and leased buildings in a manner that provides for quality space and services consistent with their operational needs and that accomplish overall Government objectives. The management, operation, and maintenance of buildings and building systems must:

(a) Be cost effective and energy efficient;

(b) Be adequate to meet the agencies' missions;

(c) Meet nationally recognized standards; and

(d) Be at an appropriate level to maintain and preserve the physical plant assets, consistent with available funding.

§ 102–74.15 What are occupancy services?

Occupancy services are:

(a) Building services (see § 102–74.30);

(b) Concession services; and

(c) Conservation programs.

§ 102–74.20 What responsibilities do Executive agencies have regarding occupancy services?

Executive agencies, upon approval from GSA, must manage, administer, and enforce the requirements of agreements (such as Memoranda of Understanding, etc.) and contracts that provide for the delivery of occupancy services.

§ 102–74.25 What standard in providing occupancy services must Executive agencies follow?

Executive agencies must provide occupancy services that substantially conform to nationally recognized standards. As needed, Executive agencies may adopt other standards for buildings and services in Federally-

controlled facilities in order to conform to statutory requirements and to implement cost-reduction efforts.

§ 102–74.30 What building services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide:

(a) Building services such as custodial, solid waste management (including recycling), heating and cooling, landscaping and grounds maintenance, tenant alterations, minor repairs, building maintenance, integrated pest management, signage, parking, and snow removal, at appropriate levels to support Federal agency missions; and

(b) Arrangements for raising and lowering the United States flags at appropriate times. In addition, agencies must display P.O.W. and M.I.A. flags at locations specified in 36 U.S.C. 189a on P.O.W./M.I.A. flag display days.

§ 102–74.35 What are concessions services?

Concessions services are services such as dry cleaners, gift shops, vending facilities (onsite preparation facilities, prepackaged facilities, sundry facilities, and vending machines), cafeterias, employee health units, and public pay telephones.

§ 102–74.40 When must Federal agencies provide concessions services?

Federal agencies, upon approval from GSA, must provide concessions services where building population supports such services and when the availability of existing commercial services is insufficient to meet Federal agency needs. See the Randolph-Sheppard Act, as amended, 20 U.S.C. 107 *et seq.*, and part 101–20, subpart 101–20.2, of this title.

§ 102–74.45 Are Federal agencies required to give blind vendors priority in operating vending facilities?

With certain exceptions, the Randolph-Sheppard Act requires that blind persons licensed under the provisions of the Act be authorized to operate vending facilities on any Federal property, including leased buildings. The Act imposes a positive obligation on Federal agencies to have suitable sites for vending facilities in buildings that they acquire.

§ 102–74.50 What are conservation programs?

Conservation programs are programs that improve energy and water efficiency and promote the use of solar and other renewable energy. These programs must promote and maintain an effective source reduction activity (reducing consumption of resources such as energy, water and paper), resource recovery activity (obtaining materials from the waste stream that can be recycled into new products), and reuse activity (reusing same product before disposition, such as reusing unneeded memos for scratch paper).

§ 102–74.55 What are asset services?

Asset services include repairs (as opposed to those minor repairs identified in § 102–74.30(a)), alterations, and modernizations for real property assets. Typically, these are the type of repairs and alterations necessary to preserve or enhance the value of the real property asset.

§ 102–74.60 What asset services must Executive agencies provide?

Executive agencies, upon approval from GSA, must provide asset services such as repairs (in addition to those minor repairs identified in § 102–74.30(a)), alterations, and modernizations for real property assets. Federal agencies must follow the prospectus submission and approval policy identified in §§ 102–73.95 and 102–73.100.

§ 102–74.65 What standard in providing asset services must Executive agencies follow?

Executive agencies must provide asset services that maintain continuity of Government operations, continue efficient building operations, extend the useful life of buildings and related building systems, and provide a quality workplace environment that enhances employee productivity.

§ 102–74.70 What Federal facility ridesharing policy must Executive agencies follow?

Executive agencies must actively promote the use of ridesharing (carpools, vanpools, privately leased buses, public transportation, and other multioccupancy modes of travel) by personnel working at Federal facilities to conserve energy, reduce congestion, improve air quality, and provide an economical way for Federal employees to commute to work.

§ 102–74.75 What steps must Executive agencies take to promote ridesharing at Federal facilities?

Agencies must:

(a) Establish an annual ridesharing goal for each facility.

(b) Report to the Administrator of General Services by June 1 of each year the goals established, the means developed to achieve those goals, and the progress achieved.

(c) Cooperate with State and local ridesharing agencies where such agencies exist.

§ 102–74.80 What specific ridesharing information must Executive agencies report to the Administrator of General Services?

The head of each agency must submit to GSA by June 1 of each year a report which includes all of the following:

(a) The name, address, title, and telephone number of the agencywide Employee Transportation Coordinator (ETC).

(b) A narrative on actions taken and barriers encountered in promoting ridesharing within the agency.

(c) Information on any noticeable facility achievements.

(d) A copy of instructions issued to the agency's facility ETC's for implementing the Federal Facility Ridesharing Program.

§ 102–74.85 Where should Executive agencies send their Federal Facility Ridesharing Reports?

Agencies must send their Federal Facility Ridesharing Reports to the Real Property Policy Division (MPR), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102–74.90 Are there any exceptions to these ridesharing reporting requirements?

Yes, facilities with less than 100 full-time employees or less than 100 full-time employees on the largest shift are not required to submit an annual report. Agencies must not subdivide buildings, groups of buildings, or worksites for the purpose of meeting the exception standards.

PART 102–75—REAL PROPERTY DISPOSAL

Sec.

102–75.5 What is the scope of this part?
102–75.10 What basic real property disposal policy governs Executive agencies?
102–75.15 What real property disposal services must Executive agencies provide?
102–75.20 What are Executive agencies' responsibilities concerning the utilization of excess property?
102–75.25 What are Executive agencies' responsibilities concerning real property surveys?
102–75.30 When may landholding Federal agencies grant rights for non-Federal interim use of excess property reported to GSA?
102–75.35 What are Executive agencies' responsibilities concerning the disposal of surplus property?
102–75.40 When may Executive agencies dispose of surplus real property by exchange for privately owned property?
102–75.45 When may Executive agencies outlease surplus real property for non-Federal interim use?
102–75.50 What are Federal agencies' reporting responsibilities under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411)?
102–75.55 What are Executive agencies' responsibilities concerning public benefit conveyances?
102–75.60 When may Executive agencies conduct negotiated sales?
102–75.65 What are Executive agencies' responsibilities concerning negotiated sales?
102–75.70 What can Executive agencies do to eliminate the potential for windfall profits to public agencies in negotiated sales?
102–75.75 What is a negotiated sale for economic development purposes?
102–75.80 What are Executive agencies' responsibilities concerning public sales?
102–75.85 How can Federal agencies obtain related disposal services?
102–75.90 What type of appraisal value must be obtained for real property disposal transactions?

102–75.95 Are appraisals required for all real property disposal transactions?
102–75.100 Who must appraise the real property?

AUTHORITY: 40 U.S.C. 486(c), 483(a), and 484; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–75.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–75.10 What basic real property disposal policy governs Executive agencies?

Executive agencies must provide, in a timely, efficient, and cost effective manner, the full range of real estate services necessary to support their real property utilization and disposal needs. Landholding agencies must make surveys of real property under their jurisdiction to identify property that is unutilized, underutilized, or not being put to optimum use. Executive agencies must have adequate procedures in place to promote the effective utilization and disposal of such real property.

§ 102–75.15 What real property disposal services must Executive agencies provide?

Executive agencies must provide real property disposal services for real property assets under their custody and control. These real property disposal services include utilization of excess property, surveys, disposal of surplus property, public benefit conveyances, negotiated sales, public sales, related disposal services, and appraisals.

§ 102–75.20 What are Executive agencies' responsibilities concerning the utilization of excess property?

Executive agencies' responsibilities concerning the utilization of excess property are to:

(a) Increase the identification and reporting of their excess real property;

(b) Achieve maximum use of their excess real property, in terms of economy and efficiency, to minimize expenditures for the purchase of real property;

(c) Provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia; and

(d) Obtain assistance from GSA in resolving conflicting requests for transferring real property that the involved agencies cannot resolve.

§ 102–75.25 What are Executive agencies' responsibilities concerning real property surveys?

A landholding agency's responsibilities concerning real property surveys are to:

(a) Survey real property under its control (*i.e.*, that property reported on its financial statements) at least annually to identify property that is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency must determine whether continuation of the current use or another use would better serve the public interest, considering both the Federal agency's needs and the property's location. In conducting annual reviews of their property holdings, § 101–47.801(b) of this title and other applicable GSA regulations provide guidelines for Executive agencies to consider in identifying unneeded Federal real property;

(b) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(c) Promptly report to GSA real property that it has determined to be excess.

§ 102–75.30 When may landholding Federal agencies grant rights for non-Federal interim use of excess property reported to GSA?

Landholding Federal agencies may grant rights for non-Federal interim use of excess property reported to GSA, when it is determined that such excess property is not required for the needs of any Federal agency.

§ 102–75.35 What are Executive agencies' responsibilities concerning the disposal of surplus property?

Executive agencies must obtain from GSA a determination that their excess real property is not needed for Federal use and is surplus to the needs of the Federal Government. After receiving this determination, Executive agencies, upon approval from GSA, must expeditiously make the surplus property available for acquisition by State and local governmental units and nonprofit institutions (*see* § 102–75.55) or for sale by public advertising, negotiation, or other disposal action. Executive agencies must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value. See § 101–47.202–2(b) of this title for the requirements for reporting excess real property. Where hazardous substance activity is identified, see § 101–47.304–14 of this title for required information that the disposal agency must incorporate into Invitation for Bids/Offers to Purchase.

§ 102–75.40 When may Executive agencies dispose of surplus real property by exchange for privately owned property?

Executive agencies may dispose of surplus real property by exchange for privately owned property only:

(a) For property management considerations such as boundary realignment or provision of access; or

(b) Where authorized by law, when the requesting Federal agency receives approval from the Office of Management and Budget and the appropriate oversight committees, and where the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other acquisition method.

§ 102–75.45 When may Executive agencies outlease surplus real property for non-Federal interim use?

Executive agencies may outlease surplus real property for non-Federal interim use, pending its disposition, when both of the following conditions exist:

(a) The lease or permit does not exceed one year and is revocable with not more than a 30-day notice by the disposal agency; and

(b) The use and occupancy will not interfere with, delay, or impede the disposal of the property.

§ 102–75.50 What are Federal agencies' reporting responsibilities under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411)?

By December 31 of each year, each landholding agency responsible for reporting must notify the Department of Housing and Urban Development (HUD) regarding the current availability status and classification of each property controlled by the agency that:

(a) Was included in a list of suitable properties published that year by HUD; and

(b) Remains available for application for use to assist the homeless, or has become available for application during that year.

§ 102–75.55 What are Executive agencies' responsibilities concerning public benefit conveyances?

Based on a highest and best use analysis, Executive agencies, upon approval from GSA, may make surplus real property available to State and local governments and certain nonprofit institutions at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations are found at § 101–47.308 of this title.

§ 102–75.60 When may Executive agencies conduct negotiated sales?

Executive agencies may conduct negotiated sales only when:

(a) The estimated fair market value of the property does not exceed $15,000; or

(b) Bid prices after advertising are unreasonable (for all or part of the property) or were not independently arrived at in open competition; or

(c) The character or condition of the property or unusual circumstances make it impractical to advertise for competitive bids and the fair market

value of the property and other satisfactory terms of disposal are obtainable by negotiation; or

(d) The disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtainable by negotiations. Such negotiated sales to public bodies must be limited to where a public benefit will result from a negotiated sale which would not be realized from a competitive sale disposal (some examples of such purposes are administrative offices and economic development); or

(e) Negotiation is otherwise authorized by the Federal Property and Administrative Services Act of 1949 or other law, such as disposals of power transmission lines for public or cooperative power projects.

§ 102–75.65 What are Executive agencies' responsibilities concerning negotiated sales?

Executive agencies must:

(a) Obtain such competition as is feasible in all negotiations of disposals and contracts for disposal of surplus property; and

(b) Prepare and transmit an explanatory statement, identifying the circumstances of each disposal by negotiation for any real property specified in 40 U.S.C. 484(e)(6)(A), to the appropriate committees of the Congress in advance of such disposal.

§ 102–75.70 What can Executive agencies do to eliminate the potential for windfall profits to public agencies in negotiated sales?

To eliminate the potential for windfall profits to public agencies, Executive agencies must include in negotiated sales to public agencies an excess profits clause, which usually runs for 3 years. This clause states that, if the purchaser should sell or enter into agreements to sell the property within 3 years from the date of title transfer by the Federal Government, all proceeds in excess of the purchasers costs will be remitted to the Federal Government. (Put the clause found in § 101–47.4908 of this title in the offer to purchase and in the conveyance document.)

§ 102–75.75 What is a negotiated sale for economic development purposes?

A negotiated sale for economic development purposes means that the public body purchasing the property will develop or make substantial improvements to the property with the intention of reselling or leasing the property in parcels to users to advance the community's economic benefit. This type of negotiated sale is acceptable where the expected public benefits to the community are greater than the anticipated proceeds derived from a competitive public sale.

§ 102–75.80 What are Executive agencies' responsibilities concerning public sales?

Executive agencies must make available by competitive public sale any surplus property that is not disposed of by public benefit discount conveyance or by negotiated sale. Awards must be made to the responsible bidder whose bid will be most advantageous to the Government, price and other factors considered.

§ 102–75.85 How can Federal agencies obtain related disposal services?

Federal agencies with independent disposal authority are encouraged to obtain disposal related services from those agencies with expertise in real property disposal, such as GSA, as allowed by 31 U.S.C. 1535 (the Economy Act), so that agencies may remain focused on their core mission.

§ 102–75.90 What type of appraisal value must be obtained for real property disposal transactions?

For all real property transactions requiring appraisals, Executive agencies must in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

§ 102–75.95 Are appraisals required for all real property disposal transactions?

Generally, yes, appraisals are required for all real property disposal

transactions. However, appraisals are not required when either of the following conditions exist:

(a) An appraisal will serve no useful purpose (*e.g.*, legislation authorizes conveyance without monetary consideration or at a fixed price). This exception does not apply to negotiated sales to public agencies intending to use the property for a public purpose not covered by any of the special disposal provisions in § 101–47.308 of this title.

(b) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $50,000.

§ 102–75.100 Who must appraise the real property?

Executive agencies must use only experienced and qualified real estate appraisers familiar with types of property to be appraised when conducting the appraisal. When an appraisal is required for the purposes of disposing of surplus property by negotiation under § 102–75.60(c), (d), or (e), contract appraisers that meet this same standard must be used. However, Executive agencies may authorize any other method of obtaining an estimate of the fair market value or the fair annual rental when the cost of obtaining such data from a contract appraiser would be out of proportion to the expected recoverable value of the property.

PART 102–76—DESIGN AND CONSTRUCTION

Sec.

102–76.5 What is the scope of this part?
102–76.10 What basic design and construction policy governs Federal agencies?
102–76.15 What are design and construction services?
102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?
102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?
102–76.30 Seismic safety. [Reserved]
102–76.35 Flood plains. [Reserved]

AUTHORITY: 40 U.S.C. 486(c) (in furtherance of the Administrator's authorities under 40 U.S.C. 601–619 and elsewhere as included under 40 U.S.C. 490(a) and (c)); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–76.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–76.10 What basic design and construction policy governs Federal agencies?

Federal agencies, upon approval from GSA, are bound by the following basic design and construction policies:

(a) Provide the highest quality services for designing and constructing new Federal facilities and for repairing and altering existing Federal facilities. These services must be timely, efficient, and cost effective.

(b) Use a distinguished architectural style and form in Federal facilities that reflects the dignity, enterprise, vigor and stability of the Federal Government.

(c) Follow nationally recognized model building codes and other applicable nationally recognized codes that govern Federal construction to the maximum extent feasible and consider local building code requirements. (See 40 U.S.C. 618 and 619.)

(d) Design Federal buildings to have a long life expectancy and accommodate periodic changes due to renovations.

(e) Make buildings cost effective, energy efficient, and accessible to and usable by the physically impaired.

(f) Provide for building service equipment that is accessible for maintenance, repair, or replacement without significantly disturbing occupied space.

(g) Consider ease of operation when selecting mechanical and electrical equipment.

(h) Agencies must follow the prospectus submission and approval policy identified in §§ 102–73.95 and 102–73.100 of this chapter.

§ 102–76.15 What are design and construction services?

Design and construction services are:

(a) Site planning and landscape design;

(b) Architectural and interior design; and

(c) Engineering systems design.

§ 102–76.20 What issues must Federal agencies consider in providing site planning and landscape design services?

In providing site planning and design services, Federal agencies must:

(a) Make the site planning and landscape design a direct extension of the building design;

(b) Make a positive contribution to the surrounding landscape;

(c) Consider requirements (other than procedural requirements) of local zoning laws and laws relating to setbacks, height, historic preservation and aesthetic qualities of a building;

(d) Identify areas for future building expansion in the architectural and site design concept for all buildings where an expansion need is identified to exist;

(e) Create a landscape design that is a pleasant, dynamic experience for occupants and visitors to Federal facilities and, where appropriate, encourage public access to and stimulate pedestrian traffic around the facilities. Coordinate the landscape design with the architectural characteristics of the building; and

(f) Comply with the requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq., and the National Historic Preservation Act, as amended, 16 U.S.C. 470 et seq., for each project.

(g) Consider the vulnerability of the facility as well as the security needs of the occupying agencies.

§ 102–76.25 What standards must Federal agencies meet in providing architectural and interior design services?

Federal agencies must design distinctive and high quality Federal facilities that meet all of the following standards:

(a) Reflect the local architecture in buildings through the use of building form, materials, colors, or detail. Express a quality of permanence in the building interior similar to the building exterior.

(b) For new construction and major renovations, provide full access to and use of Federally-controlled facilities for physically impaired persons. Follow the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157 (Uniform Federal Accessibility Standards (UFAS)) or Americans with Disabilities Act of 1990, Public Law 101–336, 104 Stat. 327 (ADA accessibility guidelines), whichever is more stringent. For minor renovations in existing buildings, meet minimum UFAS requirements. A more detailed explanation of these standards can be found in part 101–19, subpart 101–19.6, of this title.

(c) Use metric specifications in construction where the metric system is the accepted industry standard, and to the extent that such usage is economically feasible and practical.

(d) Provide for the design of security systems to protect Federal workers and visitors and to safeguard facilities against criminal activity and/or terrorist activity. Security design must support the continuity of Government operations during civil disturbances, natural disasters and other emergency situations.

(e) Design and construct facilities that meet or exceed the energy performance standards applicable to Federal buildings in 10 CFR part 435.

§ 102–76.30 Seismic safety. [Reserved]

§ 102–76.35 Flood plains. [Reserved]

PART 102–77—ART-IN-ARCHITECTURE

Sec.

102–77.5 What is the scope of this part?
102–77.10 What basic Art-in-architecture policy governs Federal agencies?
102–77.15 Who funds the Art-in-architecture efforts?
102–77.20 Who should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?
102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-architecture?

AUTHORITY: 40 U.S.C. 486(c) and 601a.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–77.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–77.10 What basic Art-in-architecture policy governs Federal agencies?

Federal agencies must incorporate fine arts as an integral part of the total building concept when designing new Federal buildings, and when making substantial repairs and alterations to existing Federal buildings, as appropriate. The selected fine arts, including painting, sculpture, and artistic work in other media, must reflect the national cultural heritage and emphasize the work of living American artists.

§ 102–77.15 Who funds the Art-in-architecture efforts?

To the extent not prohibited by law, Federal agencies must fund the Art-in-architecture efforts by allocating a portion of the estimated cost of constructing or purchasing new Federal buildings, or of completing major repairs and alterations of existing buildings. Funding for qualifying projects, including new construction, building purchases, other building acquisition, or prospectus-level repair and alteration projects, must be in a range determined by the Administrator of General Services.

§ 102–77.20 Who should Federal agencies collaborate with when commissioning and selecting art for Federal buildings?

To the maximum extent practicable, Federal agencies should seek the support and involvement of local citizens in selecting appropriate artwork. Federal agencies should collaborate with the artist and community to produce works of art that reflect the cultural, intellectual, and historic interests and values of a community. In addition, Federal agencies should work collaboratively with the architect of the building, art professionals, when commissioning and selecting art for Federal buildings. Federal agencies should commission artwork that is diverse in style and media.

§ 102–77.25 Do Federal agencies have responsibilities to provide national visibility for Art-in-architecture?

Yes, Federal agencies should provide Art-in-architecture that receives appropriate national and local visibility to facilitate participation by a large and diverse group of artists representing a wide variety of types of artwork.

PART 102–78—HISTORIC PRESERVATION

Sec.

102–78.5 What is the scope of this part?
102–78.10 What basic historic preservation policy governs Federal agencies?
102–78.15 What are historic properties?
102–78.20 Are Federal agencies required to identify historic properties?
102–78.25 What is an undertaking?
102–78.30 What are consulting parties?
102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?
102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?
102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?
102–78.50 What historic preservation services must Federal agencies provide?
102–78.55 For which properties must Federal agencies assume historic preservation responsibilities?
102–78.60 What are Federal agencies' historic preservation responsibilities when acquiring leased space?
102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?
102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

AUTHORITY: 16 U.S.C. 470 h–2; 40 U.S.C. 486(c) and 490(a).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–78.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings

Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The policies in this part are in furtherance of GSA's preservation program under section 110 of the National Historic Preservation Act (16 U.S.C. 470) and apply to properties under the jurisdiction or control of the Administrator and to any Federal agencies operating, maintaining or protecting such properties under a delegation of authority from the Administrator.

§ 102–78.10 What basic historic preservation policy governs Federal agencies?

To protect, enhance and preserve historic and cultural property under their control, Federal agencies must consider the effects of their undertakings on historic and cultural properties and give the Advisory Council on Historic Preservation (Advisory Council), the State Historic Preservation Officer (SHPO), and other consulting parties a reasonable opportunity to comment regarding the proposed undertakings.

§ 102–78.15 What are historic properties?

Historic properties are those that are included in, or eligible for inclusion in, the National Register of Historic Places (National Register) as more specifically defined at 36 CFR 800.16.

§ 102–78.20 Are Federal agencies required to identify historic properties?

Yes, Federal agencies must identify all National Register or National Register-eligible historic properties under their control. In addition, Federal agencies must apply National Register Criteria (36 CFR part 63) to properties that have not been previously evaluated for National Register eligibility and that may be affected by the undertakings of Federally sponsored activities.

§ 102–78.25 What is an undertaking?

The term undertaking means a project, activity, or program under the direct or indirect jurisdiction of a Federal agency, including those:

(a) Carried out by or on behalf of the agency;

(b) Carried out with Federal financial assistance;

(c) Requiring a Federal permit, license, or approval; and

(d) Subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

§ 102–78.30 What are consulting parties?

As more particularly described in 36 CFR 800.2(c), consulting parties are those parties having consultative roles in the Section 106 process (*i.e.*, Section 106 of the National Historic Preservation Act) that requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. Specifically, consulting parties include the State Historic Preservation Officer; Tribal Historic Preservation Officer; Indian tribes and Native Hawaiian organizations; Representatives of local governments; Applicants for Federal assistance, permits, licenses and other approvals; and other individuals and organizations with a demonstrated interest in the undertaking.

§ 102–78.35 Are Federal agencies required to involve consulting parties in their historic preservation activities?

Yes, Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.

§ 102–78.40 What responsibilities do Federal agencies have when an undertaking adversely affects a historic or cultural property?

Federal agencies must not perform an undertaking that could alter, destroy, or modify an historic or cultural property until they have consulted with the SHPO and the Advisory Council. Federal agencies must minimize all adverse impacts of their undertakings on historic or cultural properties to the extent that is feasible and prudent.

Federal agencies must follow the specific guidance on the protection of historic and cultural properties in 36 CFR part 800.

§ 102–78.45 What are Federal agencies' responsibilities concerning nomination of properties to the National Register?

Federal agencies must nominate to the National Register all properties under their control determined eligible for inclusion in the National Register.

§ 102–78.50 What historic preservation services must Federal agencies provide?

Federal agencies must provide the following historic preservation services:

(a) Prepare a Historic Building Preservation Plan for each National Register or National Register-eligible property under their control. When approved by consulting parties, such plans become a binding management plan for the property; and

(b) Investigate for historic and cultural factors all proposed sites for direct and leased construction.

§ 102–78.55 For which properties must Federal agencies assume historic preservation responsibilities?

Federal agencies must assume historic preservation responsibilities for real property assets under their custody and control. Federal agencies occupying space in buildings under the custody and control of other Federal agencies must obtain approval from the agency having custody and control of the building.

§ 102–78.60 What are Federal agencies historic preservation responsibilities when acquiring leased space?

In leasing historic property, Federal agencies must give a preference to such leasing actions in accordance with hierarchy of consideration identified in § 102–79.90 of this chapter.

§ 102–78.65 What are Federal agencies' historic preservation responsibilities when disposing of real property under their control?

Federal agencies must:

(a) To the extent practicable, establish and implement alternatives for historic properties, including adaptive reuse, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of Interior's approval of the plans of transferees of surplus Federally-owned historic properties.

(b) Review all proposed excess actions to identify any properties listed on or eligible for listing on the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.

§ 102–78.70 What are an agency's historic preservation responsibilities when disposing of another Federal agency's real property?

Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National Historic Preservation Act responsibilities.

PART 102–79—ASSIGNMENT AND UTILIZATION OF SPACE

Sec.

102–79.5 What is the scope of this part?
102–79.10 What basic assignment and utilization of space policy governs an Executive agency?
102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?
102–79.20 What standard must Executive agencies promote when assigning space?
102–79.25 Can Federal agencies allot space in Federal buildings for the provision of child care services?
102–79.30 Can Federal agencies allot space in Federal buildings for establishing fitness centers?
102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?
102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?
102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

102–79.50 What standard must Executive agencies promote in their utilization of space?
102–79.55 Are agencies required to use historic properties available to the agency?
102–79.60 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?
102–79.65 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?
102–79.70 What is a central business area?
102–79.75 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?
102–79.80 Who must approve the final delineated area?
102–79.85 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?
102–79.90 Are Executive agencies required to give preference to historic properties when acquiring leased space?
102–79.95 Automated external defibrillators. [Reserved]

AUTHORITY: 40 U.S.C. 486(c); E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; and E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–79.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–79.10 What basic assignment and utilization of space policy governs an Executive agency?

Executive agencies must provide a quality workplace environment that supports program operations, preserves the value of real property assets, meets the needs of the occupant agencies, and provides child care and physical fitness facilities in the workplace when adequately justified. An Executive agency must promote maximum utilization of Federal workspace, consistent with mission requirements, to maximize its value to the Government.

§ 102–79.15 What objectives must an Executive agency strive to meet in providing assignment and utilization of space services?

Executive agencies must provide assignment and utilization services that will maximize the value of Federal real property resources and improve the productivity of the workers housed therein.

§ 102–79.20 What standard must Executive agencies promote when assigning space?

Executive agencies must promote the optimum use of space for each assignment at the minimum cost to the Government, provide quality workspace that is delivered and occupied in a timely manner, and assign space based on mission requirements.

§ 102–79.25 Can Federal agencies allot space in Federal buildings for the provision of child care services?

Yes, in accordance with 40 U.S.C. 490b, Federal agencies can allot space in Federal buildings to individuals or entities who will provide child care services to Federal employees if:

(a) Such space is available;

(b) Such agency determines that such space will be used to provide child care services to children of whom at least 50 percent have one parent or guardian who is a Federal Government employee; and

(c) Such agency determines that such individual or entity will give priority for available child care services in such space to Federal employees.

§ 102–79.30 Can Federal agencies allot space in Federal buildings for establishing fitness centers?

Yes, in accordance with 5 U.S.C. 7901, Federal agencies can allot space in Federal buildings for establishing fitness programs.

§ 102–79.35 What elements must Federal agencies address in their planning effort for establishing fitness programs?

Federal agencies must address the following elements in their planning effort for establishing fitness programs:

(a) A survey indicating employee interest in the program;

(b) A three to five year implementation plan demonstrating long-term commitment to physical fitness/health for employees;

(c) A health related orientation, including screening procedures, individualized exercise programs, identification of high-risk individuals, and appropriate follow-up activities;

(d) Identification of a person skilled in prescribing exercise to direct the fitness program;

(e) An approach which will consider key health behavior related to degenerative disease, including smoking and nutrition;

(f) A modest facility that includes only the essentials necessary to conduct a program involving cardiovascular and muscular endurance, strength activities, and flexibility;

(g) Provision for equal opportunities for men and women, and all employees, regardless of grade level.

§ 102–79.40 Can Federal agencies allot space in Federal buildings to Federal credit unions?

Yes, in accordance with 12 U.S.C. 1770, Federal agencies may allot space in Federal buildings to Federal credit unions without charge for rent or services if:

(a) At least 95 percent of the membership of the credit union to be served by the allotment of space is composed of persons who either are presently Federal employees or were Federal employees at the time of admission into the credit union, and members of their families; and

(b) If space is available.

§ 102–79.45 What type of services may Federal agencies provide without charge to Federal credit unions?

Federal agencies may provide without charge to Federal credit union services such as:

(a) Lighting;

(b) Heating and cooling;

(c) Electricity;

(d) Office furniture;

(e) Office machines and equipment;

(f) Telephone service (including installation of lines and equipment and other expenses associated with telephone service); and

(g) Security systems (including installation and other expenses associated with security systems).

§ 102–79.50 What standard must Executive agencies promote in their utilization of space?

Executive agencies, acquiring or utilizing Federally owned and leased space under the Federal Property and Administrative Services Act of 1949, as amended, must promote efficient utilization of space according to GSA standards. In order to maximize the use of vacant space, use existing GSA-controlled space to the maximum extent practical. After considering the availability of GSA-controlled space, extend priority consideration to available space in buildings under the custody and control of the U.S. Postal Service before acquiring additional space. Where there is no Federal agency space need, Executive agencies must make every effort to maximize the productive use of vacant space through out-granting (for example, outlease, permit, license) to non-Federal entities to the extent authorized by law.

§ 102–79.55 Are agencies required to use historic properties available to the agency?

Yes, Federal agencies must assume responsibility for the preservation of the historic properties they own or control. Prior to acquiring, constructing or leasing buildings, agencies must use, to the maximum extent feasible, historic properties already owned or leased by the agency (16 U.S.C. 470h–2).

§ 102–79.60 Are Executive agencies required to give first priority to the location of new offices and other facilities in rural areas?

Yes, Executive agencies must give first priority to the location of new offices and other facilities in rural areas (7 U.S.C. 2204b–1), unless their mission or program requirements call for locations in an urban area.

§ 102–79.65 When an agency's mission and program requirements call for the location in an urban area, are Executive agencies required to give first consideration to central business areas?

Yes, when agency mission and program requirements call for location in an urban area and new space must be acquired, constructed or leased, Executive agencies must give first consideration to central business areas (CBAs) and other areas designated by local officials (Executive Order 12072 (43 FR 36869, 3 CFR, 1978 Comp., p. 213.) and Executive Order 13006 (61 FR 26071, 3 CFR, 1996 Comp., p. 195)).

§ 102–79.70 What is a central business area?

Central business area means the centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials in accordance with Executive Order 12072.

§ 102–79.75 Who is responsible for identifying the delineated area within which a Federal agency wishes to locate specific activities?

Each Federal agency is responsible for identifying the delineated area within which it wishes to locate specific activities, consistent with its mission and program requirements, and in accordance with all applicable laws, regulations, and Executive orders.

§ 102–79.80 Who must approve the final delineated area?

Federal agencies conducting the procurement must approve the final delineated area for site acquisitions and lease actions and must confirm that the final delineated area complies with the requirements of all applicable laws, regulations, and Executive orders.

§ 102–79.85 Are Executive agencies required to consider whether the central business area will provide for adequate competition when acquiring leased space?

In accordance with the Competition in Contracting Act of 1984 (CICA), as amended, (41 U.S.C. 253(a)) Executive agencies must consider whether restricting the delineated area for obtaining leased space to the central business area will provide for adequate competition when acquiring leased space. Where an Executive agency determines that the delineated area must be expanded beyond the CBA in order to provide adequate competition, the agency may expand the delineated area in consultation with local officials. Executive agencies must continue to include the CBA in such expanded areas.

§ 102–79.90 Are Executive agencies required to give preference to historic properties when acquiring leased space?

Yes, section 110 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470h–2), requires that agencies first consider historic properties already under agency control. However, the Act also provides that prior to acquiring, constructing or leasing new space, and subject to the requirements of Section 601 of Title VI of the Rural Development Act of 1972, as amended (7 U.S.C. 2204b–1), Executive Order 13006 and Executive Order 12072, Executive agencies must first consider historic properties within historic districts when locating Federal facilities. If no such suitable historic property is available, Executive agencies must then consider other developed or undeveloped sites within historic districts. Finally, Executive agencies must consider suitable historic properties outside of historic districts, if no suitable site exists within a historic district.

§ 102–79.95 Automated external defibrillators. [Reserved]

PART 102–80—SAFETY AND ENVIRONMENTAL MANAGEMENT

Sec.

102–80.5 What is the scope of this part?
102–80.10 What are the basic safety and environmental management policies for real property?
102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?
102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?
102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

102–80.30 What are Federal agencies' responsibilities concerning lead?
102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?
102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?
102–80.45 What are Federal agencies' responsibilities concerning fire prevention and fire protection engineering?
102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate reduction strategies?
102–80.55 Are Federal agencies responsible for performing facility assessments?
102–80.60 Are Federal agencies responsible for managing the execution of risk reduction projects?
102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?
102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?
102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

AUTHORITY: 40 U.S.C. 486(c) and 490.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–80.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services. The responsibilities for safety and environmental management under this part are intended to apply to GSA or those Federal agencies operating in GSA space pursuant to a GSA delegation of authority.

§ 102–80.10 What are the basic safety and environmental management policies for real property?

The basic safety and environmental management policies for real property are that Federal agencies must:

(a) Provide for a safe and healthful work environment for Federal employees and the visiting public;

(b) Protect Federal real and personal property;

(c) Promote mission continuity;

(d) Provide reasonable safeguards for emergency forces if an incident occurs;

(e) Assess risk;

(f) Make decisionmakers aware of risks; and

(g) Act promptly and appropriately in response to risk.

§ 102–80.15 What are Federal agencies' responsibilities concerning the assessment and management of asbestos?

Federal agencies have the following responsibilities concerning the assessment and management of asbestos:

(a) Inspect and assess buildings for the presence and condition of asbestos-containing materials. Space to be leased must be free of all asbestos containing materials, except undamaged asbestos flooring in the space or undamaged boiler or pipe insulation outside the space, in which case an asbestos management program conforming to Environmental Protection Agency (EPA) guidance must be implemented;

(b) Manage in-place asbestos that is in good condition and not likely to be disturbed;

(c) Abate damaged asbestos, and asbestos likely to be disturbed. Federal agencies must perform a pre-alteration asbestos assessment for activities that may disturb asbestos;

(d) Not use asbestos in new construction, renovation/modernization or repair of their owned or leased space. Unless approved by GSA, Federal agencies must not obtain space with asbestos through purchase, exchange, transfer, or lease, except as identified in paragraph (a) of this section; and

(e) Communicate all written and oral asbestos information about the leased space to tenants.

§ 102–80.20 What are Federal agencies' responsibilities concerning the abatement of radon?

Federal agencies have the following responsibilities concerning the abatement of radon in space when radon levels exceed current EPA standards:

(a) Retest abated areas and make lessors retest, as required, abated areas to adhere to EPA standards; and

(b) Test non-public water sources (in remote areas for projects such as border stations) for radon according to

EPA guidance. Radon levels that exceed current applicable EPA standards must be mitigated. Federal agencies must retest, as required, to adhere to EPA standards.

§ 102–80.25 What are Federal agencies' responsibilities concerning the management of indoor air quality?

Federal agencies must assess indoor air quality of buildings as part of their safety and environmental facility assessments. Federal agencies must respond to tenant complaints on air quality and take appropriate corrective action where air quality does not meet applicable standards.

§ 102–80.30 What are Federal agencies' responsibilities concerning lead?

Federal agencies have the following responsibilities concerning lead in buildings:

(a) Test space for lead-based paint in renovation projects that require sanding, welding or scraping painted surfaces.

(b) Not remove lead based paint from surfaces in good condition.

(c) Test all painted surfaces for lead in proposed or existing child care centers.

(d) Abate lead-based paint found in accordance with Department of Housing and Urban Development (HUD) Lead-Based Paint Guidelines, available by writing to HUD USER, P.O. Box 6091, Rockville, MD, 20850.

(e) Test potable water for lead in all drinking water outlets in child care centers.

(f) Take corrective action when lead levels exceed the HUD Guidelines.

§ 102–80.35 What are Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes?

Federal agencies' responsibilities concerning the monitoring of hazardous materials and wastes are to:

(a) Monitor the transport, use, and disposition of hazardous materials and waste in buildings to provide for compliance with GSA, Occupational Safety and Health Administration (OSHA), Department of Transportation, EPA, and applicable State and local requirements. In addition to those operating in GSA space pursuant to a delegation of authority, tenants in GSA space must comply with these requirements.

(b) In leased space, include in all agreements with the lessor requirements that hazardous materials kept in leased space are kept and maintained according to applicable Federal, State, and local environmental regulations.

§ 102–80.40 What are Federal agencies' responsibilities concerning the management of underground storage tanks?

Federal agencies have the following responsibilities concerning the management of underground storage tanks in real property:

(a) Register, manage and close underground storage tanks, including heating oil and fuel oil tanks, in accordance with GSA, EPA, and applicable State and local requirements.

(b) Require the party responsible for tanks they use but don't own to follow these requirements and to be responsible for the cost of compliance.

§ 102–80.45 What are Federal agencies' responsibilities concerning fire prevention and fire protection engineering?

Federal agencies must follow accepted fire prevention practices in operating and managing buildings. Federally-owned buildings are generally exempt from State and local code requirements in fire protection; however, in accordance with 40 U.S.C. 619, each building constructed or altered by a Federal agency must be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other nationally recognized codes. Leased buildings are subject to local requirements and inspection. Federal agencies must use the National Fire Protection Association (NFPA) codes and standards (obtained by writing to NFPA, 11 Tracy Drive, Avon, MA 02322.) as a guide for their building operations.

§ 102–80.50 Are Federal agencies responsible for identifying/estimating risks and for appropriate reduction strategies?

Yes, Federal agencies must identify and estimate safety and environmental

management risks and appropriate reduction strategies for buildings. Federal agencies occupying as well as operating buildings must identify any safety and environmental management risks and report or correct the situation, as appropriate.

§ 102–80.55 Are Federal agencies responsible for performing facility assessments?

Yes, Federal agencies must evaluate facilities to comply with GSA's safety and environmental program and applicable Federal, State and local environmental laws and regulations. Federal agencies should conduct these evaluations in accordance with schedules that are compatible with repair and alteration and leasing operations.

§ 102–80.60 Are Federal agencies responsible for managing the execution of risk reduction projects?

Yes, Federal agencies must manage the execution of risk reduction projects in buildings they operate. Federal agencies must identify and take appropriate action to eliminate hazards and regulatory noncompliance.

§ 102–80.65 What are Federal agencies' responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents?

Federal agencies have the following responsibilities concerning the investigation of incidents, such as fires, accidents, injuries, and environmental incidents in buildings they operate:

(a) Investigate all incidents regardless of severity.

(b) Form Boards of Investigation for incidents resulting in serious injury, death, or significant property losses.

§ 102–80.70 Are Federal agencies responsible for informing their tenants of the condition and management of their facility safety and environment?

Yes, Federal agencies must inform their tenants of the condition and management of their facility safety and environment. Agencies operating GSA buildings must report any significant facility safety or environmental concerns to GSA.

§ 102–80.75 Who assesses environmental issues in Federal construction and lease construction projects?

Federal agencies must assess required environmental issues throughout planning and project development, so that the environmental impacts of a project are considered during the decisionmaking process.

PART 102–81—SECURITY

Sec.
102–81.5 What is the scope of this part?
102–81.10 What basic security policy governs Federal agencies?
102–81.15 Who is responsible for upgrading and maintaining security standards in each Federally-owned facility?

AUTHORITY: 40 U.S.C. 318a, 486(c) and 490.

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–81.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–81.10 What basic security policy governs Federal agencies?

Federal agencies on Federal property under the charge and control of the Administrator and having a security delegation of authority from the Administrator must provide for the security and protection of the real estate they occupy, including the protection of persons within the property.

§ 102–81.15 Who is responsible for upgrading and maintaining security standards in each Federally-owned facility?

In a June 28, 1995, Presidential Policy Memorandum for Executive Departments and Agencies, entitled, ''Upgrading Security at Federal Facilities'' (see the Weekly Compilation of Presidential Documents, vol. 31, p. 1148), the President directed that Executive agencies must, where feasible, upgrade and maintain security in facilities they own or lease under their own authority to the minimum standards specified in

the Department of Justice's June 28, 1995 study entitled ''Vulnerability Assessment of Federal Facilities.'' The study may be obtained by writing to the Superintendent of Documents, P. O. Box 371954, Pittsburgh, PA, 15250–7954.

PART 102–82—UTILITY SERVICES

Sec.
102–82.5 What is the scope of this part?
102–82.10 What basic utility services policy govern Executive agencies?
102–82.15 What utility services must Executive agencies provide?
102–82.20 What are Executive agencies' rate intervention responsibilities?
102–82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

AUTHORITY: 40 U.S.C. 481(a) and 486(c).

SOURCE: 66 FR 5359, Jan. 18, 2001, unless otherwise noted.

§ 102–82.5 What is the scope of this part?

The real property policies contained in this part apply to Federal agencies, including the GSA/Public Buildings Service (PBS), operating under, or subject to, the authorities of the Administrator of General Services.

§ 102–82.10 What basic utility services policy govern Executive agencies?

Executive agencies procuring, managing or supplying utility services under the Federal Property and Administrative Services Act of 1949 must provide or procure services that promote economy and efficiency with due regard to the mission responsibilities of the agencies concerned.

§ 102–82.15 What utility services must Executive agencies provide?

Executive agencies must negotiate with public utilities to procure utility services and, where appropriate, provide rate intervention services in proceedings (see §§ 102–72.100 and 102-72.105 of this chapter) before Federal and State utility regulatory bodies.

§ 102–82.20 What are Executive agencies' rate intervention responsibilities?

Where the consumer interests of the Federal Government will be significantly affected and upon receiving a delegation of authority from GSA, Executive agencies must provide representation in proceedings involving utility services before Federal and State regulatory bodies. Specifically, these responsibilities include instituting formal or informal action before Federal and State regulatory bodies to contest the level, structure, or applicability of rates or service terms of utility suppliers. The Secretary of Defense is independently authorized to take such actions without a delegation from GSA when the Secretary determines such actions to be in the best interests of national security.

§ 102–82.25 What are Executive agencies' responsibilities concerning the procurement of utility services?

Executive agencies, operating under a utility services delegation from GSA, or the Secretary of Defense when the Secretary determines it to be in the best interests of national security, must provide for the procurement of utility services (such as commodities and utility rebate programs), as required, and must procure from sources of supply that are the most advantageous to the Federal Government in terms of economy, efficiency, reliability, or quality of service. Executive agencies, upon receiving a delegation of authority from GSA, may enter into contracts for utility services for periods not exceeding ten years (40 U.S.C. 481).

PART 102–83—CENTRALIZED SERVICES IN FEDERAL BUILDINGS AND COMPLEXES [RESERVED]

PARTS 102–84—ANNUAL REAL PROPERTY INVENTORIES [RESERVED]

PART 102–85—PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Subpart A—Pricing Policy—General

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102–85.10 What is the scope of this part?
102–85.15 What are the basic policies for charging Rent for space and services?

102–85.20 What does an Occupancy Agreement (OA) do?
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102–85.220 Can a customer agency forced to relocate waive the reimbursements?
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AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 66 FR 23169, May 8, 2001, unless otherwise noted.

Subpart A—Pricing Policy—General

§ 102–85.5 By what authority is the pricing policy in this part prescribed?

(a) General authority is granted in the Federal Property and Administrative Services Act of 1949, as amended, Sec. 205(c) and 210(j), 63 Stat. 390 and 86 Stat. 219; (40 U.S.C. 486(c) and 40 U.S.C. 490(j), respectively).

(b) This part implements the applicable provisions of Federal law, including, but not limited to, the:

(1) Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended;

(2) Act of July 1, 1898 (40 U.S.C. 285);

(3) Act of April 28, 1902 (40 U.S.C. 19);
(4) Act of August 27, 1935 (40 U.S.C. 304c);
(5) Public Buildings Act of 1959, as amended (40 U.S.C. 601–619);
(6) Public Buildings Amendments of 1972, Pub. L. 92–313, (86 Stat. 219);
(7) Rural Development Act of 1972, Pub. L. 92–419, (86 Stat. 674);
(8) Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note);
(9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*);
(10) National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*);
(11) Intergovernmental Cooperation Act of 1968 and the Federal Urban Land Use Act (42 U.S.C. 4201–4244; 40 U.S.C. 531–535);
(12) Public Buildings Cooperative Use Act of 1976, as amended (40 U.S.C. 490(a)(16)–(19), 601a and 612a);
(13) Public Buildings Amendments of 1988, Pub. L. 100–678, (102 Stat. 4049);
(14) National Historic Preservation Act of 1966 as amended (16 U.S.C. 461 *et seq.*);
(15) Executive Order 12072 of August 16, 1978 (43 FR 36869);
(16) Executive Order 12411 of March 29, 1983 (48 FR 13391);
(17) Executive Order 12512 of April 29, 1985 (50 FR 18453);
(18) Executive Order 13005 of May 21, 1996 (61 FR 26069); and
(19) Executive Order 13006 of May 21, 1996 (61 FR 26071).

§ 102–85.10 What is the scope of this part?

(a) This part describes GSA policy and principles for the assignment and occupancy of space under its control and the rights and obligations of GSA and the customer agencies that request or occupy such space pursuant to GSA Occupancy Agreements (OA).

(b) Space managed by agencies under delegation of authority from GSA is subject to the provisions of this part.

(c) This part is not applicable to:

(1) Licenses, permits or leases with non-Federal entities under the Public Buildings Cooperative Use Act (40 U.S.C. 490(a)(16–19)); or

(2) The disposal of surplus lease space under section 210(h)(2) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(h)(2)).

§ 102–85.15 What are the basic policies for charging Rent for space and services?

(a) GSA will charge for space and services furnished by GSA (unless otherwise exempted by the Administrator of General Services) a Rent charge which will approximate commercial charges for comparable space and services. Rent for all assignments for GSA-controlled space will be priced according to the principles of the pricing policy in this part. These principles are reflected in the following elements of GSA Rent charges:

(1) ''Shell'' Rent based on approximate commercial charges for comparable space and services for Federally owned space (accomplished using appraisal procedures);

(2) Rent based on actual cost of the lease, including the costs (if any) of services not provided by the lessor, plus a GSA fee;

(3) Amortization of any tenant improvement allowance used;

(4) Any applicable real estate taxes, operating costs, parking, security and joint use fees; and

(5) For certain projects involving new construction or major renovation of Federally-owned buildings, a return on investment pricing approach if an appraisal-determined rental value does not provide a minimum return (OMB discount rate for calculating the present value of yearly costs plus 2%) on the cost of the prospective capital investment. Each specific use of Return on Investment (ROI) pricing must be approved by OMB and duly recorded in an Occupancy Agreement (OA) with the customer agency. Once the ROI methodology is employed to establish Rent for a capital investment, the ROI method must be retained for the duration of the OA term.

(b) Special services not included in the standard levels of service may be provided by GSA on a reimbursable basis. GSA may also furnish alterations on a reimbursable basis in buildings where GSA is responsible for alterations only.

(c) The financial terms and conditions under which GSA assigns, and a

customer agency occupies, each block of GSA-controlled space, shall be documented in a written OA.

§ 102–85.20 What does an Occupancy Agreement (OA) do?

An OA defines GSA's relationship with each customer agency and:

(a) Establishes specific financial terms, provisions, rights, and obligations of GSA and its customer for each space assignment;

(b) Minimizes exposure to future unknown costs for both GSA and customer agencies;

(c) Stabilizes Rent payments to the extent reasonable and desired by customers; and

(d) Allows tailoring of space and related services to meet customer agency needs.

§ 102–85.25 What is the basic principle governing OAs?

The basic principle governing OAs is to adopt the private sector practice of capturing in a written document the business terms to which GSA and a customer agency agree concerning individual space assignments.

§ 102–85.30 Are there special rules for certain Federal customers?

Yes, in lieu of OAs, GSA is able to enter into agreements with customer agencies that reflect the parties particular needs. For example, the space and services provided to the U.S. House of Representatives and the U.S. Senate are governed by existing memoranda of agreement (MOA). When there are conflicts between the provisions of this part and MOAs, the MOAs prevail.

§ 102–85.35 What definitions apply to this part?

The following definitions apply to this part:

Accept space or *acceptance of space* means a commitment from an agency to occupy specified GSA-controlled space.

Agency-controlled and/or operated space means:

(1) Space that is owned, leased, or otherwise controlled or operated by Federal agencies under any authority other than the Federal Property and Administrative Services Act of 1949, as amended; and

(2) it also includes agency-acquired space for which acquisition authority has been delegated or otherwise granted to the agency by GSA. It does not include space covered by an OA.

Assign or *assignment* is defined in the definition for space assignment.

Building shell means the complete enveloping structure, the base-building systems, and the finished common areas (building common and floor common) of a building that bound the tenant areas.

Customer agency means any department, agency, or independent establishment in the Federal Government, including any wholly-owned corporation; any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol, and any activities under his direction).

Emergency relocation is a customer move that results from an extraordinary event such as a fire, natural disaster, or immediate threat to the health and safety of occupants that renders a current space assignment unusable and requires that it be vacated, permanently or temporarily.

Federal Buildings Fund means the fund into which Rent charges and other revenues are deposited, and collections cited in section 210(j) of the Federal Property and Administrative Services Act of 1949, as amended (U.S.C. 490(j)), and from which monies are available for expenditures for real property management and related activities in such amounts as are specified in annual appropriations acts without regard to fiscal year limitations.

Federally controlled space means workspace for which the United States Government has a right of occupancy by ownership, by lease, or by any other means, such as by contract, barter, license, easement, permit, requisition, or condemnation. Such workspace excludes space owned or leased by private sector entities performing work on Government contracts.

Federally owned space means space, the title to which is vested in the United States Government or which

will vest automatically according to an existing agreement.

Forced move means the involuntary physical relocation, from one space assignment to another, of a customer agency housed in GSA-controlled space initiated by another customer agency or by GSA, before the expiration of a lease or an OA term. (See also the definition of GSA-initiated move.)

General use space means all types of space other than ''warehouse,'' ''parking,'' or ''unique'' space, as defined elsewhere in this part. Examples of general use space are:

(1) Office and office-related space such as file areas, libraries, meeting rooms, computer rooms, mail rooms, training and conference, automated data processing operations, courtrooms, and judicial chambers; and

(2) Storage space that contains different quality and finishes from general use space, but that is within a building where predominantly general use space is located.

GSA-controlled space means Federally controlled space under the custody or control of GSA. It includes space for which GSA has delegated operational, maintenance, or protection authority to the customer agency.

GSA-delegated space (or GSA delegated building) means GSA-controlled space for which GSA has delegated operational, maintenance or protection authority to the customer agency.

GSA-initiated move means any relocation action in GSA-controlled space that:

(1) Is involuntary to the customer agency and required to be effective prior to the expiration of an effective OA, or in the case of leased space, prior to the expiration of the lease; or

(2) Is an emergency relocation initiated by GSA.

Initial space alteration (ISA). See definition of ''tenant improvement.''

Initial space layout means the specific placement of workstations, furniture and equipment within new space assignments.

Inventory means a summary or itemized list of the real property, and associated descriptive information, that is under the control of a Federal agency.

Joint-use space means common space within a Federally controlled facility, not specifically assigned to any one agency, and available for use by multiple agencies, such as cafeterias, auditoriums, conference rooms, credit unions, visitor parking spaces, snack bars, certain wellness/physical fitness facilities, and child care centers.

Leased space means space for which the United States Government has a right of use and occupancy by virtue of having acquired a leasehold interest.

Non-cancelable space means space that, due to its layout, design, location, or other characteristics, is unlikely to be needed by another GSA customer agency. Typical conditions that might cause space to be defined as non-cancelable are:

(1) Special space construction features;

(2) Lack of any realistic Federal need for the space other than by the requesting agency; and

(3) Remote location or unusual term (short or long) desired by the agency.

Occupancy Agreement (OA) means a written agreement descriptive of the financial terms and conditions under which GSA assigns, and a customer agency occupies, the GSA-controlled space identified therein.

Parking or *parking space* means surface land, structures, or areas within structures designed and designated for the purpose of parking vehicles.

Personnel means the peak number of persons to be housed during a single shift, regardless of how many workstations are provided for them. In addition to permanent employees of the agency, personnel includes temporaries, part-time, seasonal, and contractual employees, budgeted vacancies, and employees of other agencies and organizations who are housed in a space assignment.

Portfolio leases mean long term or ''master'' leases, usually negotiated to house several agencies whose individual term requirements differ from the terms of the underlying GSA lease with the lessor, and from each other. These may also be leases housing single agencies, but which entail for GSA responsibilities (burdens and benefits) which mimic an ownership position, or equity rights, even though no equity

interest or ownership liability exists. An example of the latter would be long term renewal options on a lease which, in order to enjoy, involve substantial capital outlays by GSA to improve the building infrastructure. In both these cases, GSA is assuming risks or capital expenditures outside of the conventions of single transactions or occupancies. Accordingly, for a portfolio lease, it is not appropriate merely to pass through to the customer agency(ies) the rental rate of the underlying GSA lease. Portfolio leases are treated for pricing purposes as owned space, with Rent set by appraisal.

Predominant use means the use to which the greatest portion of a location is put. Predominant use is determined by the Public Buildings Service (PBS), GSA, and will typically result in the designation of a location as one of four types of space—General Use, Warehouse, Unique, or Parking—even though some smaller portions of the space may be used for one or more of the other types of uses.

Rent means the amounts charged by GSA for space and related services to the customer agencies with tenancy in GSA-controlled space. The word ''Rent'' is capitalized to differentiate it from the contract ''rent'' that GSA pays lessors.

Rentable square footage means the amount of space as defined in ''Building Owners and Managers Association (BOMA)/American National Standards Institute (ANSI) Standard Z65.1–1996.'' The BOMA/ANSI standard also defines ''gross,'' ''office area,'' ''floor common,'' and ''building common'' areas. Any references to these terms in this part refer to the BOMA/ANSI standard definitions. This standard has been adopted in accordance with GSA's interest in conforming its practices to nationally recognized industry standards to the extent possible.

NOTE TO THE DEFINITION OF RENTABLE SQUARE FOOTAGE: Rentable square footage generally includes square footage of areas occupied by customers plus a prorated share of floor common areas such as elevator lobbies, building corridors, public restrooms, utility closets, and machine rooms. Rentable square footage also includes a prorated share of building common areas located throughout the building. Examples of building common space include ground floor entrance lobby, enclosed atrium, loading dock, and mail room.

Request for space or *space request* means a written or electronically submitted document or an oral request, within which an agency's space needs are summarized. A request for space is requisite for development of an OA. Thus, it must be submitted to GSA by a duly authorized official of the customer agency, and it must be accompanied by documentation of the customer agency's ability to fund payment of required Rent charges.

Return on Investment (ROI) pricing is one possible methodology used to establish a Rent rate for certain owned space. Typically, ROI pricing is a Rent rate that ensures GSA a reasonable return on its cost to acquire and improve the asset. ROI pricing may be used where no other comparable commercial space is available or no other appraisal method would be appropriate. It may also be used in cases in which an appraisal-based rental rate will not meet GSA's minimum return requirements for the planned level of investment.

Security fees mean Rent charges for building services provided by GSA's Federal Protective Service. Security fees are comprised of basic and building specific charges.

(a) A basic security fee is assessed in all PBS-controlled properties where the Federal Protective Service (FPS) provides security services. The rate is set annually on a per-square-foot basis. The charge includes the following services:

(1) General law enforcement on PBS-controlled property;

(2) Physical security assessments;

(3) Crime prevention and awareness training;

(4) Advice and assistance to building security committees;

(5) Intelligence sharing program;

(6) Criminal investigation;

(7) Assistance and coordination in Occupancy Emergency Plan development;

(8) Coordination of mobilization and response to terrorist threat or civil disturbance;

(9) Program administration for security guard contracts; and

(10) Megacenter operations for monitoring building perimeter alarms and

dispatching appropriate law enforcement response.

(b) The building specific security charge is comprised of two elements: Operating expenses and amortized capital costs. Building specific charges, whether operating expenses or capital costs, are distributed overall federal users by building or facility in direct proportion to each customer agency's percentage of federal occupancy. As with joint use charges, the distribution of building-specific charges among customer agencies is not re-adjusted for vacancy.

Space means a defined area within a building and/or parcel of land. (Personal property and furniture are not included.)

Space allocation standard (SAS) means a standard agreed upon by GSA and a customer agency, written in terms that permit nationwide or regional application, that is used as a basis for establishing that agency's space requirements. An SAS may describe special GSA and customer agency funding responsibilities, although such responsibilities will be covered in OAs for space assignments. An SAS may also be developed between GSA and customer agencies on a regional level to standardize or simplify transactions, provided that the terms of a regional SAS are consistent with the terms of that agency's national SAS and the terms of this part.

Space assignment or *assignments* means a transaction between GSA and a customer agency that results in a customer agency's right to occupy certain GSA-controlled space, usually in return for customer agency payment(s) to GSA for use of the space. Space assignment rights, obligations, and responsibilities not covered in this part, or in the customer guides, are formalized in an OA.

Space planning means the process of using recognized professional techniques of planning, layout and interior design to determine the best internal location and the most efficient configuration for satisfying agency space needs.

Space program of requirements means a summary statement of an agency's space needs. These requirements will generally include information about location, square footage, construction requirements, and duration of the agency's space need. They may be identified in any format mutually agreeable to GSA and the agency.

Special space means space which has unusual architectural/construction features, requires the installation of special equipment, or requires disproportionately high or low costs to construct, maintain and/or operate as compared to office or storage space. Special space generally refers to space which has construction features, finishes, services, utilities, or other additional costs beyond those specified in the customer general allowance (*e.g.*, courtrooms, laboratories).

Standard level of service. See §102–85.165 for the definition of standard level of service.

Telecommunications means electronic processing of information, either voice or data or both, over a wide variety of media, (*e.g.*, copper wire, microwave, fiber optics, radio frequencies), between individuals or offices within a building (*e.g.*, local area networks), between buildings, and between cities.

Tenant improvement (TI) means a finished component of an interior block of space. Tenant improvements represent additions to or alterations of the building shell that adapt the workspace to the specific uses of the customer. If made at initial occupancy, the TIs are known as initial space alterations or ISAs.

Tenant improvement (TI) allowance means the dollar amount, including design, labor, materials, contractor costs (if contractors are used), management, and inspection, that GSA will spend to construct, alter, and finish space for customer occupancy (excluding personal property and furniture, which are customer agency responsibilities) at initial occupancy. The dollar amounts for the allowances are different for each agency and bureau to accommodate agencies' different mission needs. The dollar amounts also may vary by locations reflecting different costs in different markets. The PBS bill will only reflect the actual amount the customers spend, not the allowance. The amount of the TI allowance is determined by GSA. Agencies can request that GSA revise the TI allowance

amount by project or categorically for an entire bureau. The cost of replacement of tenant improvements is borne by the customer agency.

Unique space means space for which there is no commercial market comparable (*e.g.*, border stations).

Warehouse or *warehouse space* means space contained in a structure primarily intended for the housing of files, records, equipment, or other personal property, and is not primarily intended for housing personnel and office operations. Warehouse space generally is designed and constructed to lower specifications than office buildings, with features such as exposed ceilings, unfinished perimeter and few dividing partitions. Warehouse space also is usually heated to a lesser degree but not air-conditioned, and is cleaned to lesser standards than office space.

Workspace means Federally controlled space in buildings and structures (permanent, semi-permanent, or temporary) that provides an acceptable environment for the performance of agency mission requirements by employees or by other persons occupying it.

§ 102–85.40 What are the major components of the pricing policy?

The major components of the pricing policy are:

(a) An OA between a customer agency and GSA;

(b) Tenant improvement allowance; and

(c) The establishment of Rent the agency pays to GSA based on the OA for:

(1) Leased space, a pass-through to the customer agency of the underlying GSA lease contract costs, and a PBS fee; or

(2) GSA-owned space, Rent determined by appraisal.

Subpart B—Occupancy Agreement

§ 102–85.45 When is an Occupancy Agreement required?

An Occupancy Agreement (OA) is required for each customer agency's space assignment. The OA must be agreed to by GSA and the customer agency prior to GSA's commitment of funds for occupancy and formal assignment of space.

§ 102–85.50 When does availability of funding have to be certified?

The customer agency must sign an OA prior to GSA's making any major contractual commitments associated with the space request. Typically, this should occur at the earliest possible opportunity-*i.e.*, when funds become available. However, in no event shall certification occur later than just prior to the award of the contract to a design architect in the case of Federal construction or renovation in Federally owned space or prior to the award of a lease. This serves as a customer agency's funding commitment unless certification is provided on another document.

§ 102–85.55 What are the terms and conditions included in an OA?

The terms and conditions are modeled after commercial practice. They are intended to reflect a full mutual understanding of the financial terms and agreement of the parties. The OA describes the actual space and services to be provided and all associated actual costs to the customer during the term of occupancy. The OA does not include any general provisions or terms contained in this part. OAs typically describe the following, depending on whether the space is leased or Federally owned:

(a) Assigned square footage;

(b) Shell Rent and term of occupancy;

(c) Amortized amount of customer allowance used;

(d) Operating costs and escalations;

(e) One time charges; *e.g.*, lump sum payments by the customer;

(f) Real estate tax and escalations;

(g) Parking and escalations;

(h) Additional/reduced services;

(i) Security services and associated Rent;

(j) Joint use space and associated Rent;

(k) PBS fee;

(l) Customer rights and provisions for occupancy after OA expiration;

(m) Cancellation provisions if different from this part or the customer service guides;

(n) Any special circumstances associated with the occupancy, such as environmental responsibilities, unusual use restrictions, or agreements with local authorities;

(o) Emergency relocations;

(p) Clauses specific to the agreement;

(q) Other Rent, *e.g.*, charges for antenna sites, land;

(r) Agency standard clauses; and

(s) General clauses defining the obligations of both parties.

§ 102–85.60 Who can execute an OA?

Authorized GSA and customer agency officials who can commit or obligate the funds of their respective agencies can execute an OA. Higher level signatories may be appropriate from both agencies for space assignments in owned or leased space, that are unusual in size, location, duration, public interest, or other factors. Each agency decides its appropriate signatory level.

§ 102–85.65 How does an OA obligate the customer agency?

An OA obligates the executing customer agency to fund the current-year Rent obligation owed GSA, as well as to reimburse GSA for any other *bona fide* obligations that GSA may have incurred on behalf of the customer agency. Although the OA is an interagency agreement, memorializing the understanding of GSA and its customer agency, the OA may not be construed as obligating future year customer agency funds until they are legally available. A multi-year OA commitment assumes the customer agency will seek the necessary funding through budget and appropriations processes.

§ 102–85.70 Are the standard OA terms appropriate for non-cancelable space?

Yes, most of the standard terms apply; however, the right to cancel upon a 4-month (120 day) notice is not available. See § 102–85.35 for the definition of non-cancelable space.

§ 102–85.75 When can space assignments be terminated?

(a) Customer agencies can terminate any space assignments, except those designated as non-cancelable, with the following stipulations:

(1) The agency must give GSA written notice at least four months prior to termination.

(2) The agency is responsible for reimbursing GSA for the unpaid balance of the cost of tenant improvements, generally prior to GSA releasing the agency from the space assignment. In the event the customer agency received a rent concession (*e.g.*, free rent) at the inception of the assignment as part of the consideration for the entire lease term, then the amount of the concession applicable to the remaining term must be repaid to GSA.

(3) If the space to be vacated is ready for occupancy by another customer and marketable, GSA accepts the termination of assignment.

(4) If the agency has vacated all of the space and removed all personal property and equipment from the space by the cancellation date in the written notice, the agency will be released effective that date from further Rent payments.

(5) An agency may terminate a GSA space assignment with less than a four-month advance written notice to GSA, if:

(i) Either GSA or the terminating agency has identified another agency customer for the assigned space and that substitute agency wants and is able to fully assume the Rent payments due from the terminating agency; and

(ii) The terminating agency continues to pay Rent until the new agency starts paying Rent.

(b) GSA can terminate space assignments according to GSA regulations for emergency or forced moves.

(c) OAs terminate automatically at expiration.

§ 102–85.80 Who is financially responsible for expenses resulting from tenant non-performance?

The customer agencies are financially responsible for expenses incurred by the Government as a result of any failure on their part to fulfill a commitment outlined in an OA or other written agreements in advance of, or in addition to, the OA. Customer agencies

are also financially responsible for revised design costs and any additional costs resulting from changes to space requirements or space layouts made by the agency after a lease, alteration, design, or construction contract has been awarded by GSA.

§ 102–85.85 What if a customer agency participates in a consolidation?

If an agency agrees to participate in a consolidation upon expiration of an OA, the relocation expenses will be addressed in the new OA negotiated by GSA and the customer agency. The customer agency generally pays such costs.

Subpart C—Tenant Improvement Allowance

§ 102–85.90 What is a tenant improvement allowance?

A tenant improvement (TI) allowance enables the customer agency to design, configure and build out space to support its program operations. It is based on local market construction costs and the specific bureau's historical use of space. (See also the definition at § 102–85.35.)

§ 102–85.95 Who pays for the TI allowance?

The customer agency pays for the amount of the tenant improvement allowance actually used.

§ 102–85.100 How does a customer agency pay for tenant improvements?

To pay for the installation of tenant improvements, the customer agency may spend an amount not to exceed the tenant allowance. The amount spent by the customer agency for TIs is amortized over a period of time specified in the OA, not to exceed the useful life of the improvements. This amortization payment is in addition to the shell rent and services.

§ 102–85.105 How does an agency pay for customer alterations that exceed the TI allowance?

Amounts exceeding the TI allowance are paid in a one-time lump sum and are not amortized over the term of the occupancy. The agency certifies lump sum funds are available prior to GSA proceeding with the work.

§ 102–85.110 Can the allowance amount be changed?

The GSA schedule of allowances for new assignments is adjusted annually for design and construction cost changes. As the need arises, GSA may adjust an agency or bureau's TI allowance. GSA may also adjust a TI allowance for a specific project, if conditions warrant. This decision is solely GSA's. In addition, the customer agency may waive any part or all of its customization allowance in the case of a new space assignment. In the case of backfill space (also known as relet space), the customer agency can also waive any part or all of the tenant general allowance, if the customer agency will use the existing tenant improvements, with or without modifications.

Subpart D—Rent Charges

§ 102–85.115 How is the Rent determined?

Unless an exemption is granted under the authority of the Administrator of General Services, the Rent charged approximates commercial charges for comparable space and space-related services as follows:

(a) Generally, Rent for Federally owned space provided by GSA is based on market appraisals of fully serviced rental values for the predominant use to which space in a building is put; *e.g.*, general use, warehouse use, and parking use. In cases where market appraisals are not practical; *e.g.*, in cases involving unique space or when market comparables are not available, GSA may establish Rent on the basis of alternate commercial practices. See the discussion of alternate valuation methods in § 102–85.125. Amortization of tenant improvements, parking fees, and security charges are calculated separately and added to the appraised shell Rent to establish the Rent charge. Customer agencies also pay for a pro rata share of joint use space.

(b) Generally, Rent for space leased by GSA is based on the actual cost of the lease, including the costs (if any) of services not provided by the lessor,

plus a GSA fee, and security charges and parking (if not in the lease).

(1) The Rent is based on the terms and conditions of the OA, starting with the shell Rent.

(2) In addition to the shell Rent, the Rent includes amortization of TI allowances used, real estate taxes, operating costs, extra services, parking, GSA fee for its services, and charges for security, joint-use, and other applicable rental charges (*e.g.*, antenna site, land, wareyard).

§ 102–85.120 What is shell Rent?

Shell Rent is that portion of GSA Rent charged for the building envelope and land. (See § 102–85.35 for the definition of building shell.)

§ 102–85.125 What alternate methods may be used to establish Rent in Federally-owned space?

Alternate methods of establishing Rent are based on private sector models. They include, but are not limited to:

(a) Return on investment (ROI) approach or a similar cost recovery method used when market comparables are not available and/or GSA must ''build to suit'' to fulfill customer agency requirements; *e.g.*, border stations; and

(b) Rent schedules for the right to use rooftops and other floor areas not suitable for workspace; *e.g.*, antenna sites and signage.

§ 102–85.130 How are exemptions from Rent granted?

Exemptions from Rent are rare. However, the Administrator of General Services may exempt any GSA customer from Rent after a determination that application of Rent would not be feasible or practical. Customer agency requests for exemptions must be addressed to the Administrator of General Services and submitted in accordance with GSA Order PBS 4210.1, ''Rent Exemption Procedures,'' dated December 20, 1991, or in accordance with any superseding GSA order. A copy of the order may be obtained from the Office of Portfolio Management, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

§ 102–85.135 What if space and services are provided by other executive agencies?

Any executive agency other than GSA providing space and services is authorized to charge the occupant for the space and services at rates approved by the Administrator of General Services and the Director of the Office of Management and Budget. If space and services are of the type provided by the Administrator of General Services, the executive agency providing the space and services must credit the monies derived from any fees or charges to the appropriation or fund initially charged for providing the space or services, as prescribed by Subsection 210(k) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490(k)).

§ 102–85.140 How are changes in Rent reflected in OAs?

(a) If Rent changes in ways that are identified in the OA, then no change to the OA is required. Typically, OAs state that certain components of Rent are subject to annual escalation; *e.g.*, operating expenses, real estate taxes, parking charges, the basic security charge, and building-specific security operating and amortized capital expenses which do not entail a change in service level. Also, in Federally-owned space, OAs state that the shell rent is re-marked to market every five years. In leased space, the OA will identify any programmed changes in the lease contract rent (such as pre-set increases or steps in the contract rent rate) that will translate into a change in the customer agency's Rent. Changes in Rent specified in OAs will serve as notice to agencies of future Rent changes for budgeting purposes. For a discussion of budgeting for Rent, see § 102–85.160.

(b) Changes to Rent other than those identified in paragraph (a) of this section typically require an amended OA. There are many events that might occasion a change in Rent, and an amended OA, such as:

(1) An agency expands or contracts at an existing location;

(2) PBS agrees to fund additional tenant improvements that are then amortized over the remaining OA term, or over an extended OA term;

(3) Upon physical re-measurement, the true square footage of the space assignment is found to be different from the square footage of record;

(4) The amount of joint use space in the building changes;

(5) The level of building-specific security services changes; or

(6) PBS undertakes new capital expenditures for new or enhanced security countermeasures.

§ 102–85.145 When are customer agencies responsible for Rent charges?

(a) When a customer agency occupies cancelable space, it is responsible for Rent charges until:

(1) The date of release specified in the OA, or until the date space is actually vacated, whichever occurs later; or

(2) Four months after having provided GSA written notice of release; or

(3) The date space is actually vacated, whenever occupancy extends beyond the date agreed upon under either paragraph (a)(1) or (2) of this section.

(b) When a customer agency releases non-cancelable space, it is responsible for all attributable Rent and other space charges until the OA expires. This responsibility is mitigated to the extent that GSA is able to assign the space to another user or dispose of it. (See § 102–85.65 How does an OA obligate the customer agency?)

(c) When a customer agency commits to occupy space in an OA or other binding document, but never occupies that space, that agency is responsible for:

(1) Non-cancelable space: Rent payments due for the space until the OA expires, unless GSA can mitigate; or

(2) All other space: Either GSA's space charges for 4 months plus the cost of tenant improvements or GSA's actual costs, whichever is less.

§ 102–85.150 How will Rent charges be reflected on the customer agency's Rent bill?

Rent charges are billed monthly, in arrears, based on an annual rate which is divided by 12. Billing commences the first month in which the agency occupies the space for more than half of the month, and ends in the last month the agency occupies the space.

§ 102–85.155 What does a customer agency do if it does not agree with a Rent bill?

(a) If a customer agency does not agree with the way GSA has determined its Rent obligation (*e.g.*, the agency does not agree with GSA's space classification, appraised Rent, or the allocation of space), the agency may appeal its Rent bill to GSA.

(b) GSA will not increase or otherwise change Rent for any assignment, except as agreed in an OA, in the case of errors, or when the OA is amended. However, customer agencies may at any time request a regional review of the measurement, classification, service levels provided, or charges assessed that pertain to the space assignment without resorting to formal procedures. Such requests do not constitute appeals and should be directed to the appropriate GSA Regional Administrator.

(c) If a customer agency still wants to pursue a formal appeal of Rent charges, they may do so, but with the following limitations:

(1) Terms, including rates, to which the parties agree in an OA are not appealable;

(2) In leased space, the contract rent passed through from the underlying lease cannot be appealed;

(3) In GSA-owned space, when the fully-serviced shell Rent is established through appraisal, the appraised rate must exceed comparable commercial square foot rates by 20 percent. When shell Rent in owned space is established on the basis of ROI at the inception of an OA, and the customer agency executes the OA, then the ROI rate cannot later be appealed. Other components of Rent that are established on the basis of actual cost—*eg.*, amortization of TIs and building specific security charges—also cannot be appealed.

(4) Additionally, the customer agency is required to compare its assigned space with other space in the surrounding community that:

(i) Is available in similar size block of space in a comparable location;

(ii) Is comparable in quality to the space provided by GSA;

(iii) Provides similar service levels as part of the charges;

(iv) Contains similar contractual terms, conditions, and escalations clauses; and

(v) Represents a lease transaction completed at a similar point in time.

(5) Data from at least three comparable locations will be necessary to demonstrate a market trend sufficient to warrant revising an appraised Rent charge.

(d) A customer agency filing an appeal for a particular location or building must develop documentation supporting the appeal and file the appeal with the appropriate Regional Administrator. The GSA regional office will verify all pertinent information and documentation supporting the appeal. The GSA Regional Administrator will accept or deny the appeal and will notify the appealing agency of his or her ruling.

(e) A further appeal may be filed by the customer agency's headquarters level officials with the Commissioner, Public Buildings Service, if equitable resolution has not been obtained from the initial appeal. A head of a customer agency may further appeal to the Administrator of the General Services. Documentation of the procedures followed for prior resolution must accompany an appeal to the Administrator. Decisions made by the Administrator are final.

(f) Adjustments of Rent resulting from reviews and appeals will be effective in the month that the agency submitted a properly documented appeal. Adjustments in Rent made under this section remain in effect for the remainder of the 5-year period in which the charges cited in the OA were applicable.

§ 102–85.160 How does a customer agency know how much to budget for Rent?

GSA normally provides customer agencies an estimate of Rent increases approximately 2 months prior to the agencies' Office of Management and Budget (OMB) submission for the fiscal year in which GSA will charge Rent. This gives the affected customer agencies an opportunity to budget for an increase or decrease. However, GSA must obtain the concurrence of OMB for such changes prior to notifying customer agencies. In the event GSA is unable to provide timely notice of a future Rent increase, customer agencies are nonetheless obligated to pay the increased Rent amount. For existing assignments in owned buildings, GSA charges for fully serviced shell Rent, in aggregate, shall not exceed the bureau level budget estimates provided to the customer agencies annually. This provision does not apply to:

(a) New assignments;

(b) Changes in current assignments;

(c) Leased space;

(d) New tenant improvement amortization;

(e) Building specific security costs; and

(f) New amortization of capital expenditures under ROI pricing due to changes in scope of proposed projects or repair and/or replacement of building components

Subpart E—Standard Levels of Service

§ 102–85.165 What are standard levels of service?

(a) The standard levels of service covered by GSA Rent are comparable to those furnished in commercial practice. They are based on the effort required to service the customer agency's space for a 5-day week (Monday to Friday), one-shift regular work schedule. GSA will provide adequate building startup services, before the beginning of the customer's regular one-shift work schedule, and shutdown services after the end of this schedule.

(b) Without additional charge, GSA customers may use their assigned space and supporting automatic elevator systems, lights and small office and business machines including personal computers on an incidental basis, unless specified otherwise in the OA.

§ 102–85.170 Can flexitime and other alternative work schedules cost the customer agency more?

Yes, GSA customers who extend their regular work schedule by a system of flexible hours shall reimburse GSA for its approximate cost of the additional services required.

§ 102–85.175 Are the standard level services for cleaning, mechanical operation, and maintenance identified in an OA?

Unless specified otherwise in the OA, standard level services for cleaning, mechanical operation, and maintenance shall be provided in accordance with the GSA standard level of services as defined in § 102–85.165, and in the PBS Customer Guide to Real Property. A copy of the guide may be obtained from the General Services Administration, Office of Business Performance (PX), 1800 F Street, NW., Washington, DC 20405.

§ 102–85.180 Can there be other standard services?

GSA may provide additional services to its customers at the levels and times deemed by the Administrator of General Services to be necessary for efficient operations and proper servicing of space under the assignment responsibility of GSA.

§ 102–85.185 Can space be exempted from the standard levels of service

Yes, customer agencies may be excused from paying for standard service levels for space assignments when:

(a) In GSA-delegated space, the customer agency provides for these services itself and thus pays Rent minus charges for these services; or

(b) In rare instances, standard service levels may be waived by the Administrator of General Services in instances where charging for such standard services would not be feasible or practical, *e.g.*, in assignments of limited square footage or functional use.

§ 102–85.190 Can GSA Rent be adjusted when standard levels of service are performed by other customer agencies?

Customer agencies that arrange and pay separately for the costs of standard level services normally covered by GSA Rent will receive a Rent credit or other type of reimbursement by GSA for the amount GSA would have charged for such services. The type of reimbursement is at GSA's discretion. The reimbursement is limited to the amount included for the services in GSA Rent. Approval to perform or contract for such services must be obtained in advance by the customer agency from the appropriate GSA regional office.

Subpart F—Special Services

§ 102–85.195 Does GSA provide special services?

Yes, GSA provides special services on a cost-reimbursable basis:

(a) In GSA-controlled space, GSA may provide for special services that cannot be separated from the building or space costs (inseparable services, such as utilities, which are not individually metered). GSA's estimate of the special service cost is the basis for the bill amount. The bill amount for separable special services is either based on a previously agreed upon fixed price or the actual cost, including a fee for GSA's services.

(b) GSA can also provide special services to other Federal agencies in agency-controlled and operated space on a cost-reimbursable basis.

Subpart G—Continued Occupancy, Relocation and Forced Moves

§ 102–85.200 Can customer agencies continue occupancy of space or must they relocate at the end of an OA?

The answer is contingent upon whether the customer agency is in Federally owned or leased space.

(a) Unless stated otherwise in the OA, a customer agency within a GSA controlled, Federally owned building has automatic occupancy rights at the end of the OA term for occupied space. However, a new OA must be negotiated.

(b) In leased space, the OA generally reflects the provisions of the underlying lease and will specify whether or not renewal options are available. If the OA does not include a renewal option, customer agencies should assume relocation would be necessary upon OA expiration, and budget for it. Further, renewal options are not, in themselves, a guarantee of continued occupancy at that location. In some cases, the renewal rate is substantially above market or the option was not part of the

initial price evaluation for the occupancy. In such cases, GSA may be required to run a competition for the replacement lease, and a relocation may ensue. Nonetheless, it is also possible that GSA may execute a succeeding lease with the incumbent lessor, in which case there is no move.

(c) GSA and customer agencies should initiate discussions at least 18–20 months in advance of OA expiration to address an action for the replacement or continued occupancy of the existing space assignment. This allows both agencies time to budget for the work and the cost.

§ 102–85.205 What happens if a customer agency continues occupancy after the expiration of an OA?

A mutual goal of GSA and its customers is to have current OAs in place for all space assignments. However, provisions are necessary to cover the GSA and customer relationship if an OA expires prior to execution of a mutually desired succeeding agreement. Because the risks, liabilities, and consequences of a customer's continued occupancy depend on whether the assigned space is leased or Federally owned, different provisions in the following table apply:

HOLDOVER TENANCY—CUSTOMER AGENCY RESPONSIBILITIES IN THE EVENT OF TENANT DELAY IN VACATING SPACE

In leased space	In federally owned space
To pay those costs associated with lease contract, GSA fee, and damages/claims, arising from changes in GSA contract costs which are caused by the tenant's delay.	To pay Rent as determined by GSA's pricing policy, as described in this part, and those added costs to GSA (claims, damages, changes, etc.) resulting from the tenant-caused delay.

§ 102–85.210 What if a customer agency has to relocate?

If the agency or GSA determines relocation is necessary at the expiration of an OA for either Federally owned or leased space, the customer agency is responsible for all costs associated with relocation at that time.

§ 102–85.215 What if another customer agency forces a GSA customer to move?

If a GSA customer agency, or GSA, forces the relocation of another GSA customer agency prior to the expiration of the customer's OA, the ''forcing'' agency is responsible:

(a) For all reasonable costs associated with the relocation of the agency being ''forced'' to move, including architectural-engineering design, move coordination and physical relocation, telecommunications and ADP equipment relocation and installation;

(b) To GSA for all of the relocated agency's unpaid tenant improvements, if any; and

(c) To the customer agency for the undepreciated amount of any lump sum payment that was already made by the agency for alterations.

§ 102–85.220 Can a customer agency forced to relocate waive the reimbursements?

Yes, a customer agency forced to relocate can waive some or all of the reimbursements from the forcing agency that are prescribed in § 102–85.215. However, a relocated customer agency cannot waive the requirement for the forcing customer agency to reimburse GSA for unpaid tenant improvements. If GSA is the ''forcing'' agency, it is responsible for the same costs as any other forcing customer agency.

§ 102–85.225 What are the funding responsibilities for relocations resulting from emergencies?

(a) In emergencies, swift remedies, including the possible relocation of a customer agency to alternate space, are required. The remedies may include requests for funding authorizations from OMB and Congress. GSA may serve as the central coordinator of such remedies.

(b) Funding responsibility will vary by situation. If a customer agency is only temporarily displaced from its space, GSA typically covers the cost of temporary set-up in a provisional location. If the agency is obliged to relocate permanently, an OA will be prepared which will address all terms of

the occupancy. In such cases, new tenant improvements will be constructed which can be amortized over the life of a new occupancy term, and a new Rent rate will be developed.

PART 102–86—102–115 [RESERVED]

SUBCHAPTER D—TRANSPORTATION

PART 102–116—GENERAL [RESERVED]

PART 102–117—TRANSPORTATION MANAGEMENT

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AUTHORITY: 31 U.S.C. 3726; 40 U.S.C. 481, *et seq.*

SOURCE: 65 FR 60061, Oct. 6, 2000, unless otherwise noted.

Subpart A—General

§ 102–117.5 What is transportation management?

Transportation management is agency oversight of the physical movement of commodities, household goods (HHG) and other freight from one location to another by a transportation service provider (TSP).

§ 102–117.10 What is the scope of this part?

This part addresses shipping freight and household goods worldwide. Freight is property or goods transported as cargo. Household goods are not Government property, but are employees' personal property entrusted to the Government for shipment.

§ 102–117.15 To whom does this part apply?

This part applies to all agencies and wholly owned Government corporations as defined in 5 U.S.C. 101 *et seq.* and 31 U.S.C. 9101(3), except those indicated in § 102–117.20.

§ 102–117.20 Are any agencies exempt from this part?

(a) The Department of Defense is exempted from this part by an agreement under the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 *et seq.*), except for the rules to debar or suspend a TSP under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4).

(b) Subpart D of this part, covering household goods, does not apply to the uniformed service members, under Title 37 of the United States Code, ''Pay and Allowances of the Uniformed Services,'' including the uniformed service members serving in civilian agencies such as the U.S. Coast Guard, National Oceanic and Atmospheric Administration and the Public Health Service.

§ 102–117.25 What definitions apply to this part?

The following definitions apply to this part:

Accessorial charges are charges for services other than line-haul charges. Examples of accessorial charges are:

(1) Inside delivery, redelivery, reconsignment, and demurrage or detention for freight; and

(2) Packing, unpacking, appliance servicing, blocking and bracing, and special handling for household goods.

Agency is any executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Nuclear Regulatory Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods and documentary evidence of title.

Cargo preference is the legal requirement for all, or a portion of all, ocean-borne cargo to be transported on U.S. flag vessels.

Commuted rate system is the system under which an agency may allow its employees to make their own household goods shipping arrangements, and apply for reimbursement.

Consignee is the person or agent to whom freight or household goods are delivered.

Consignor is the person or firm that ships freight or household goods to a consignee.

Contract of carriage is a contract between the TSP and the agency to transport freight or household goods.

Debarment is an action to exclude a TSP, for a period of time, from providing services under a rate tender or any contract under the Federal Acquisition Regulation (48 CFR part 9, subpart 9.406).

Demurrage is the penalty charge to an agency for delaying the agreed time to load or unload shipments by rail or ocean TSPs.

Detention is the penalty charge to an agency for delaying the agreed time to load or unload shipments by truck TSPs.

Electronic commerce is an electronic technique for carrying out business transactions (ordering and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Foreign flag vessel is any vessel of foreign registry including vessels owned by U.S. citizens but registered in a foreign country.

Freight is property or goods transported as cargo.

Government bill of lading (GBL) is the Optional Form 1103 or 1203, the transportation document used as a receipt of goods, evidence of title, and a contract of carriage.

Governmentwide Transportation Policy Council (GTPC) is an interagency forum to help GSA formulate policy. It provides agencies managing transportation programs a forum to exchange information and ideas to solve common

problems. For further information on this council, see web site: *http://www.policyworks.gov/transportation*.

Hazardous material is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety, and property when transported in commerce, and labels as hazardous under section 5103 of the Federal Hazardous Materials Transportation Law (49 U.S.C. 5103 *et seq.*). When transported internationally hazardous material may be classified as ''Dangerous Goods.'' All such freight must be marked in accordance with applicable regulations and the carrier must be notified in advance.

Household goods (HHG) are the personal effects of Government employees and their dependents.

Line-Haul is the movement of freight between cities excluding pickup and delivery service.

Mode is a method of transportation, such as rail, motor, air, water, or pipeline.

Rate schedule is a list of freight rates, taxes, and charges assessed against non-household goods cargo.

Rate tender is an offer a TSP sends to an agency, containing service rates and charges.

Receipt is a written or electronic acknowledgment by the consignee or TSP as to when and where a shipment was received.

Release/declared value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. The statement of released value must be shown on any applicable tariff, tender, or other document covering the shipment.

Reparation is a payment to or from an agency to correct an improper transportation billing involving a TSP. Improper routing, overcharges or duplicate payments may cause such improper billing. This is different from a payment to settle a claim for loss and damage.

Suspension is an action taken by an agency to disqualify a TSP from receiving orders for certain services under a contract or rate tender (48 CFR part 9, subpart 9.407).

Transportation document is any executed agreement for transportation service, such as bill of lading, Government bill of lading (GBL), Government travel request (GTR) or transportation ticket.

Transportation service provider (TSP) is any party, person, agent or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

U.S. flag air carrier is an air carrier holding a certificate issued by the United States under 49 U.S.C. 41102 (49 U.S.C. 40118, 48 CFR part 47, subpart 47.4).

U.S. flag vessel is a commercial vessel, registered and operated under the laws of the U.S., owned and operated by U.S. citizens, and used in commercial trade of the United States.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

Subpart B—Acquiring Transportation or Related Services

§ 102–117.30 What choices do I have when acquiring transportation or related services?

When you acquire transportation or related services you may:

(a) Use the GSA tender of service;

(b) Use another agency's contract or rate tender with a TSP only if allowed by the terms of that agreement or if the Administrator of General Services delegates authority to another agency to enter an agreement available to other Executive agencies;

(c) Contract directly with a TSP using the acquisition procedures under the Federal Acquisition Regulation (FAR) (48 CFR chapter 1); or

(d) Negotiate a rate tender under a Federal transportation procurement statute, 49 U.S.C. 10721 or 13712.

§ 102–117.35 What are the advantages and disadvantages of using GSA's tender of service?

(a) It is an advantage to use GSA's tender of service when you want to:

(1) Use GSA's authority to negotiate on behalf of the Federal Government and take advantage of the lower rates and optimum service that result from a larger volume of business;

(2) Use a uniform tender of service; and

(3) Obtain assistance with loss and damage claims.

(b) It is a disadvantage to use GSA's tender of service when:

(1) You want an agreement that is binding for a longer term than the GSA tender of service;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) You do not want to pay for the GSA administrative service charge as a participant in the GSA rate tender programs.

§ 102–117.40 When is it advantageous for me to use another agency's contract or rate tender for transportation services?

It is advantageous to use another agency's contract or rate tender for transportation services when the contract or rate tender offers better or equal value than otherwise available to you.

§ 102–117.45 What other factors must I consider when using another agency's contract or rate tender?

When using another agency's contract or rate tender, you must:

(a) Assure that the contract or rate tender meets any special requirements unique to your agency;

(b) Pay any other charges imposed by the other agency for external use of their contract or rate tender; and

(c) Ensure the terms of the other agency's contract or rate tender allow you to use it.

§ 102–117.50 What are the advantages and disadvantages of contracting directly with a TSP under the FAR?

(a) The FAR is an advantage to use when:

(1) You ship consistent volumes in consistent traffic lanes;

(2) You have sufficient time to follow FAR contracting procedures; and

(3) Your contract office is able to handle the requirement.

(b) The FAR may be a disadvantage when you:

(1) Cannot prepare and execute a FAR contract within your time frame; or

(2) Have recurring shipments between designated places, but do not expect sufficient volume to obtain favorable rates.

§ 102–117.55 What are the advantages and disadvantages of using a rate tender?

(a) Using a rate tender is an advantage when you:

(1) Have a shipment that must be made within too short a time frame to identify or solicit for a suitable contract; or

(2) Have shipments recurring between designated places, but do not expect sufficient volume to obtain favorable rates.

(b) Using a rate tender may be a disadvantage when:

(1) You have sufficient time to use the FAR and this would achieve better results;

(2) You require transportation service for which no rate tender currently exists; or

(3) A TSP may revoke or terminate the tender on short notice.

§ 102–117.60 What is the importance of terms and conditions in a rate tender or other transportation document?

Terms and conditions are important to protect the Government's interest and establish the performance and standards expected of the TSP. It is important to remember that terms and conditions are:

(a) Negotiated between the agency and the TSP before movement of any item; and

(b) Included in all contracts and rate tenders listing the services the TSP is offering to perform at the cost presented in the rate tender or other transportation document.

NOTE TO § 102–117.60: You must reference the negotiated contract or rate tender on all transportation documents. For further information see § 102–117.65.

§ 102–117.65 What terms and conditions must all rate tenders or contracts include?

All rate tenders and contracts must include, at a minimum, the following terms and conditions:

(a) Charges cannot be prepaid.

(b) Charges are not paid at time of delivery.

(c) Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

(d) To qualify for the rates specified in a rate tender filed under the provisions of the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712), property must be shipped by or for the Government and the rate tender must indicate the Government is either the consignor or the consignee and include the following statement:

Transportation is for the (agency name) and the total charges paid to the transportation service provider by the consignor or consignee are for the benefit of the Government.

(e) When using a rate tender for transportation under a cost-reimbursable contract, include the following statement in the rate tender:

Transportation is for the (agency name), and the actual total transportation charges paid to the transportation service provider by the consignor or consignee are to be reimbursed by the Government pursuant to cost reimbursable contract (number). This may be confirmed by contacting the agency representative at (name, address and telephone number).

(f) Other terms and conditions that may be specific to your agency or the TSP such as specialized packaging requirements or HAZMAT. For further information see the ''U.S. Government Freight Transportation Handbook,'' available by contacting:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

§ 102–117.70 Where do I find more information on terms and conditions?

You may find more information about terms and conditions in part 102–118 of this chapter, or the ''U.S. Government Freight Transportation Handbook'' (see § 102–117.65(f)).

§ 102–117.75 How do I reference the rate tender on transportation documents?

To ensure proper reference of a rate tender on all shipments, you must show the applicable rate tender number and carrier identification on all transportation documents, such as, section 13712 quotation, ''ABC Transportation Company, Tender Number * * *''.

§ 102–117.80 How are rate tenders filed?

(a) The TSP must file a written rate tender with your agency.

(b) You must send two copies of the rate tender to:

General Services Administration
Federal Supply Service, Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://www.fss.gsa.gov/transtrav

§ 102–117.85 What is the difference between a Government bill of lading (GBL) and a bill of lading?

(a) A Government bill of lading (GBL), Optional Forms 1103 and 1203, is a controlled document that conveys specific terms and conditions to protect the Government interest and serves as the contract of carriage.

(b) A bill of lading, sometimes referred to as a commercial bill of lading, is the document used as a receipt of goods and documentary evidence of title.

(c) Use a bill of lading for Government shipments if the specific terms and conditions of a GBL are included in any contract or rate tender (see § 102–117.65) and the bill of lading makes reference to that contract or rate tender (see § 102–117.75 and the ''U.S. Government Freight Transportation Handbook'').

§ 102–117.90 May I use U.S. Government bill of lading (GBL) (Optional Forms 1103 and 1203), to acquire freight, household goods or other related transportation services?

You may use the GBL, Optional Forms 1103 or 1203, to acquire transportation services offered under a contract or rate tender until September 30, 2001. The GBL will completely phase out for domestic shipments on September 30, 2001, and be replaced by commercial bills of lading. After September 30, 2001, you may use the GBL only for international shipments (including domestic offshore shipments).

§ 102–117.95 After the GBLs retire for domestic shipments, what transportation documents must I use to acquire freight, household goods or other transportation services?

Bills of lading and purchase orders are the transportation documents you use to acquire freight, household goods and other transportation services after the GBLs retire for domestic shipments. Terms and conditions in § 102–117.65 and the ''U.S. Government Freight Transportation Handbook'' will still be required. For further information on payment methods, see part 102–118 of this chapter.

Subpart C—Business Rules To Consider Before Shipping Freight or Household Goods

§ 102–117.100 What business rules must I consider before acquiring transportation or related services?

When acquiring transportation or related services you must:

(a) Use the mode or individual transportation service provider (TSP) that provides the overall best value to the agency. For more information, see §§ 102–117.105 through 102–117.130;

(b) Demonstrate no preferential treatment to any TSP when arranging for transportation services except on international shipments. Preference on international shipments must be given to United States registered commercial vessels and aircraft;

(c) Ensure that small businesses receive equal opportunity to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(d) Encourage minority-owned businesses and women-owned businesses, to compete for all business they can perform to the maximum extent possible, consistent with the agency's interest (see 48 CFR part 19);

(e) Review the need for insurance. Generally, the Government is self-insured; however, there are instances when the Government will purchase insurance coverage for Government property. An example may be cargo insurance for international air cargo shipments to cover losses over those allowed under the International Air Transport Association (IATA) or for ocean freight shipments; and

(f) Consider the added requirements on international transportation found in subpart D of this part.

§ 102–117.105 What does best value mean when routing a shipment?

Best value to your agency when routing a shipment means using the mode or individual TSP providing the best combination of satisfactory service factors.

§ 102–117.110 What is satisfactory service?

You should consider the following factors in assessing whether a TSP offers satisfactory service:

(a) Availability and suitability of the TSP's equipment;

(b) Adequacy of shipping and receiving facilities at origin and destination;

(c) Adequacy of pickup and/or delivery service;

(d) Availability of accessorial and special services;

(e) Estimated time in transit;

(f) Record of past performance of the TSP including accuracy of billing;

(g) Capability of warehouse equipment and storage space; and

(h) Experience of company, management, and personnel to perform the requirements.

§ 102–117.115 How do I calculate total delivery costs?

You calculate total delivery costs for a shipment by considering all costs related to the shipping or receiving process, such as packing, blocking, bracing,

drayage, loading and unloading, and transporting.

§ 102–117.120 To what extent must I equally distribute orders for transportation and related services among TSPs?

You must assure that small businesses, socially or economically disadvantaged and women-owned TSPs have equal opportunity to provide the transportation or related services.

§ 102–117.125 How detailed must I describe property for shipment when communicating to a TSP?

You must describe property in enough detail for the TSP to determine the type of equipment or any special precautions necessary to move the shipment. Details might include weight, volume, measurements, routing, hazardous cargo, or special handling designations.

§ 102–117.130 Must I select TSPs who use alternative fuels?

No, but, whenever possible, you are encouraged to select TSPs that use alternative fuel vehicles and equipment, under policy in the Clean Air Act Amendments of 1990 (42 U.S.C. 7612) or the Energy Policy Act of 1992 (42 U.S.C. 13212).

Subpart D—Restrictions That Affect International Transportation of Freight and Household Goods

§ 102–117.135 What are the international transportation restrictions?

Several statutes mandate the use of U.S. flag carriers for international shipments (see 48 CFR part 47, subparts 47.4 and 47.5). For example:

(a) Arrangements for international air transportation services must follow the Fly America Act (International Air Transportation Fair Competitive Practices Act of 1974) (49 U.S.C. 40118); and

(b) International movement of property by water is subject to the cargo preference laws (see 46 CFR part 381 and 48 CFR part 47, subpart 47.5), which require the use of a U.S. flag carrier when service is available. The Maritime Administration (MARAD) monitors agency compliance of these laws. All Government shippers must send a rated copy of the ocean carrier's bill of lading to MARAD within 30 days of loading aboard a vessel to:

Department of Transportation
Maritime Commission
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
E-mail: cargo@marad.dot.gov

NOTE TO § 102–117.135(B): Non-vessel Operations Common Carrier (NVOCC) or freight forwarder bills of lading are not acceptable (see 48 CFR part 47).

§ 102–117.140 What is cargo preference?

Cargo preference is the statutory requirement that all, or a portion of all, ocean-borne cargo that moves internationally be transported on U.S. flag vessels. Deviations or waivers from the cargo preference laws must be approved by:

Department of Transportation
Maritime Administration
Office of Cargo Preference
400 7th Street, SW.
Washington, DC 20590
http://www.marad.dot.gov/
Tel. 1–800–9US-FLAG
e-mail: cargo@marad.dot.gov

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102–117.145 What are coastwise laws?

Coastwise laws refer to laws governing shipment of freight, household goods and passengers by water between points in the United States or its territories. The purpose of these laws is to assure reliable shipping service and the existence of a maritime capability in times of war or national emergency (see section 27 of the Merchant Marine Act of 1920, 46 App. U.S.C. 883, 19 CFR 4.80).

§ 102–117.150 What do I need to know about coastwise laws?

You need to know that:

(a) Goods transported entirely or partly by water between U.S. points, either directly or via a foreign port, must travel in U.S. Maritime Administration (MARAD) authorized U.S. Flag vessels;

(b) There are exceptions and limits for the U.S. Island territories and possessions in the Atlantic and Pacific Oceans (see § 102–117.155); and

(c) The Secretary of the Treasury is empowered to impose monetary penalties against agencies that violate the coastwise laws.

§ 102–117.155 Where do I go for further information about coastwise laws?

You may refer to 46 App. U.S.C. 883, 19 CFR 4.80, DOT MARAD, the U.S. Coast Guard or U.S. Customs Service for further information on exceptions to the coastwise laws.

Subpart E—Shipping Freight

§ 102–117.160 What is freight?

Freight is property or goods transported as cargo.

§ 102–117.165 What shipping process must I use for freight?

Use the following shipping process for freight:

(a) For domestic shipments you must:

(1) Identify what you are shipping;

(2) Decide if the cargo is HAZMAT, classified, or sensitive that may require special handling or placards;

(3) Decide mode;

(4) Check for applicable contracts or rate tenders within your agency or other agencies, including GSA;

(5) Select the most efficient and economical TSP that gives the best value;

(6) Prepare shipping documents; and

(7) Schedule pickup, declare released value and ensure prompt delivery with a fully executed receipt, and oversee shipment.

(b) For international shipments you must follow all the domestic procedures and, in addition, comply with the cargo preference laws. For specific information, see subpart D of this part.

§ 102–117.170 What reference materials are available to ship freight?

(a) The following is a partial list of handbooks and guides available from GSA:

(1) U.S. Government Freight Transportation Handbook;

(2) Limited Authority to Use Commercial Forms and Procedures;

(3) Submission of Transportation Documents; and

(4) Things to be Aware of When Routing or Receiving Freight Shipments.

(b) For the list in paragraph (a) of the section and other reference materials, contact:

(1) General Services Administration, Federal Supply Service, Audit Division (FBA), 1800 F Street, NW. Washington, DC 20405, http://www.fss.gsa.gov/transtrav; or

(2) General Services Administration, Federal Supply Service, 1500 Bannister Road, Kansas City, MO 64131, http://www.kc.gsa.gov/fsstt.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102–117.175 What factors do I consider to determine the mode of transportation?

Your shipping urgency and any special handling requirements determine which mode of transportation you select. Each mode has unique requirements for documentation, liability, size, weight and delivery time. HAZMAT, radioactive, and other specialized cargo may require special permits and may limit your choices.

§ 102–117.180 What transportation documents must I use to ship freight?

To ship freight:

(a) By land (domestic shipments), use a bill of lading;

(b) By land (international shipments), use the GBL;

(c) By ocean, use an ocean bill of lading, when suitable, along with the GBL; and

(d) By air, use a bill of lading.

§ 102–117.185 Where must I send a copy of the transportation documents?

(a) You must forward an original copy of all transportation documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405

(b) For all property shipments subject to the cargo preference laws (see § 102–117.140), a copy of the ocean carrier's bill of lading, showing all freight

charges, must be sent to MARAD within 30 days of vessel loading.

§ 102–117.190 Where do I file a claim for loss or damage to property?

You must file a claim for loss or damage to property with the TSP.

§ 102–117.195 Are there time limits affecting filing of a claim?

Yes, several statutes limit the time for administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for more information and the time limit tables.

Subpart F—Shipping Hazardous Material (HAZMAT)

§ 102–117.200 What is HAZMAT?

HAZMAT is a substance or material the Secretary of Transportation determines to be an unreasonable risk to health, safety and property when transported in commerce. Therefore, there are restrictions on transporting HAZMAT (49 U.S.C. 5103 *et seq.*).

§ 102–117.205 What are the restrictions for transporting HAZMAT?

Agencies that ship HAZMAT are subject to the Environmental Protection Agency and the Department of Transportation regulations, as well as applicable State and local government rules and regulations.

§ 102–117.210 Where can I get guidance on transporting HAZMAT?

The Secretary of Transportation prescribes regulations for the safe transportation of HAZMAT in intrastate, interstate, and foreign commerce in 49 CFR parts 171 through 180. The Environmental Protection Agency also prescribes regulations on transporting HAZMAT in 40 CFR parts 260 through 266. You may also call the HAZMAT information hotline at 1–800–467–4922 (Washington, DC area, call 202–366–4488).

Subpart G—Shipping Household Goods

§ 102–117.215 What are household goods (HHG)?

Household goods (HHG) are the personal effects of Government employees and their dependents.

§ 102–117.220 What choices do I have to ship HHG?

(a) You may choose to ship HHG by:

(1) Using the commuted rate system;

(2) GSA's Centralized Household Goods Traffic Management Program (CHAMP);

(3) Contracting directly with a TSP, (including a relocation company that offers transportation services) using the acquisition procedures under the Federal Acquisition Regulation (FAR) (see § 102–117.35);

(4) Using another agency's contract with a TSP (see §§ 102–117.40 and 102–117.45);

(5) Using a rate tender under the Federal transportation procurement statutes (49 U.S.C. 10721 or 13712) (see § 102–117.35).

(b) As an alternative to the choices in paragraph (a) of this section, you may request the Department of State to assist with shipments of HHG moving to, from, and between foreign countries or international shipments originating in the continental United States. The nearest U.S. Embassy or Consulate may assist with arrangements of movements originating abroad. For further information contact:

Department of State
Transportation Operations
2201 C Street, NW.
Washington, DC 20520

NOTE TO § 102–117–220: Agencies must use the commuted rate system for civilian employees who transfer between points inside the continental United States unless it is evident from the cost comparison that the Government will incur a savings ($100 or more) using another choice listed. The use of household goods rate tenders is not authorized when household goods are shipped under the commuted rate system.

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102–117.225 What is the difference between a contract or a rate tender and a commuted rate system?

(a) Under a contract or a rate tender, the agency prepares the bill of lading and books the shipment. The agency is the shipper and pays the TSP the applicable charges. If loss or damage occurs, the agency may either file a claim on behalf of the employee directly with the TSP, or help the employee in filing a claim against the TSP.

(b) Under the commuted rate system an employee arranges for shipping HHG and is reimbursed by the agency for the resulting costs. Use this method only within the continental United States (not Hawaii or Alaska). The agency reimburses the employee according to the Commuted Rate Schedule published by the GSA. The Commuted Rate Schedule (without rate table) is available on the Internet at http://www.policyworks.gov.

(c) For rate table information or a subscription for the Commercial Relocation Tariff contact:

American Moving and Storage Association
1611 Duke Street
Alexandria, VA 22314–3482
Tel. 703–683–7410

(d) For further information or assistance, you may contact:

General Services Administration
National Customer Service Center
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

§ 102–117.230 Must I compare costs between a contract or a rate tender and the commuted rate system before choosing which method to use?

Yes, you must compare the cost between a contract or a rate tender, and the commuted rate system before you make a decision.

§ 102–117.235 How do I get a cost comparison?

(a) You may calculate a cost comparison internally according to 41 CFR 302–8.3.

(b) You may request GSA to perform the cost comparison if you participate in the CHAMP program by sending GSA the following information as far in advance as possible (preferably 30 calendar days):

(1) Name of employee;

(2) Origin city, county and State;

(3) Destination city, county, and State;

(4) Date of household goods pick up;

(5) Estimated weight of shipments;

(6) Number of days storage-in-transit (if applicable); and

(7) Other relevant data.

(c) For more information on cost comparisons contact:

General Services Administration
Federal Supply Service
1500 Bannister Road
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

NOTE TO § 102–117.235(C): GSA may charge an administrative fee for agencies not participating in the CHAMP program.

§ 102–117.240 What is my agency's financial responsibility to an employee who chooses to move all or part of his/her HHG under the commuted rate system?

(a) Your agency is responsible for reimbursing the employee what it would cost the Government to ship the employee's HHG by the most cost-effective means available or the employee's actual moving expenses, whichever is less.

(b) The employee is liable for the additional cost when the cost of transportation arranged by the employee is more than what it would cost the Government.

NOTE TO § 102–117.240: For more information on how to ship household goods, refer to 41 CFR 302–8.3.

§ 102–117.245 What is my responsibility in providing guidance to an employee who wishes to use the commuted rate system?

You must counsel employees that they may be liable for all costs above the amount reimbursed by the agency if they select a TSP that charges more than provided under the Commuted Rate Schedule.

§ 102–117.250 What are my responsibilities after shipping the household goods?

(a) Each agency should develop an evaluation survey for the employee to complete following the move.

(b) Under the CHAMP program, you must counsel employees to fill out

their portion of the GSA Form 3080, Household Goods Carrier Evaluation Report. This form reports the quality of the TSP's performance. After completing the appropriate sections of this form, the employee must send it to the bill of lading issuing officer who in turn will complete the form and forward it to:

General Services Administration
National Customer Service Center
1500 Bannister Rd.
Kansas City, MO 64131
http://www.kc.gsa.gov/fsstt

[65 FR 60060, Oct. 6, 2000; 65 FR 81405, Dec. 26, 2000]

§ 102–117.255 What actions may I take if the TSP's performance is not satisfactory?

If the TSP's performance is not satisfactory, you may place a TSP in temporary nonuse, suspended status, or debarred status. For more information on doing this, see subpart I of this part and the FAR (48 CFR 9.406–3 and 9.407–3).

§ 102–117.260 What are my responsibilities to employees regarding the TSP's liability for loss or damage claims?

Regarding the TSP's liability for loss or damage claims, you must:

(a) Advise employees on the limits of the TSP's liability for loss of and damage to their HHG so the employee may evaluate the need for added insurance;

(b) Inform the employee about the procedures to file claims for loss and damage to HHG with the TSP; and

(c) Counsel employees, who have a loss or damage to their HHG that exceeds the amount recovered from a TSP, on procedures for filing a claim against the Government for the difference. Agencies may compensate employees up to $40,000 on claims for loss and damage under 31 U.S.C. 3721, 3723 (41 CFR 302–8.2(f)).

§ 102–117.265 Are there time limits that affect filing a claim with a TSP for loss or damage?

Yes, several statutes limit the time for filing claims or taking other administrative or judicial action against a TSP. Refer to part 102–118 of this chapter for information on claims.

Subpart H—Performance Measures

§ 102–117.270 What are agency performance measures for transportation?

(a) Agency performance measures are indicators of how you are supporting your customers and doing your job. By tracking performance measures you can report specific accomplishments and your success in supporting the agency mission. The Government Performance and Results Act (GPRA) of 1993 (31 U.S.C. 1115) requires agencies to develop business plans and set up program performance measures.

(b) Examples of performance measurements in transportation would include how well you:

(1) Increase the use of electronic commerce;

(2) Adopt industry best practices and services to meet your agency requirements;

(3) Use TSPs with a track record of successful past performance or proven superior ability;

(4) Take advantage of competition in moving agency freight and household goods;

(5) Assure that delivery of freight and household goods is on time against measured criteria; and

(6) Create simplified procedures to be responsive and adaptive to the customer needs and concerns.

Subpart I—Transportation Service Provider (TSP) Performance

§ 102–117.275 What performance must I expect from a TSP?

You must expect the TSP to provide consistent and satisfactory service to meet your agency transportation needs.

§ 102–117.280 What aspects of the TSP's performance are important to measure?

Important TSP performance measures may include, but are not limited to the:

(a) TSP's percentage of on-time deliveries;

(b) Percentage of shipments that include overcharges or undercharges;

(c) Percentage of claims received in a given period;

(d) Percentage of returns received on-time;

(e) Percentage of shipments rejected;

(f) Percentage of billing improprieties;

(g) Average response time on tracing shipments;

(h) TSP's safety record (accidents, losses, damages or misdirected shipments) as a percentage of all shipments;

(i) TSP's driving record (accidents, traffic tickets and driving complaints) as a percentage of shipments; and

(j) Percentage of customer satisfaction reports on carrier performance.

§ 102–117.285 What are my choices if a TSP's performance is not satisfactory?

You may choose to place a TSP in temporary nonuse, suspension, or debarment if performance is unsatisfactory.

§ 102–117.290 What is the difference between temporary nonuse, suspension and debarment?

(a) Temporary nonuse is limited to your agency and initiated by the agency transportation officers for a period not to exceed 90 days for:

(1) Willful violations of the terms of the rate tender;

(2) Persistent or willful failure to meet requested packing and pickup service;

(3) Failure to meet required delivery dates;

(4) Violation of Department of Transportation (DOT) hazardous material regulations;

(5) Mishandling of freight, damaged or missing transportation seals, improper loading, blocking, packing or bracing of property;

(6) Improper routing of property;

(7) Subjecting your shipments to unlawful seizure or detention by failing to pay debts;

(8) Operating without legal authority;

(9) Failure to settle claims according to Government regulations; or

(10) Repeated failure to comply with regulations of DOT, Surface Transportation Board, State or local governments or other Government agencies.

(b) Suspension is disqualifying a TSP from receiving orders for certain services under a contract or rate tender pending an investigation or legal proceeding. A TSP may be suspended on adequate evidence of:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State antitrust statutes;

(3) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(4) Any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the TSP as a transporter of the Government's property or the HHG of its employees relocated for the Government.

(c) Debarment means action taken to exclude a contractor from contracting with all Federal agencies. The seriousness of the TSP's acts or omissions and the mitigating factors must be considered in making any debarment decisions. A TSP may be debarred for the following reasons:

(1) Failure of a TSP to take the necessary corrective actions within the period of temporary nonuse; or

(2) Conviction of or civil judgment for any of the causes for suspension.

§ 102–117.295 Who makes the decisions on temporary nonuse, suspension and debarment?

(a) The transportation officer may place a TSP in temporary nonuse for a period not to exceed 90 days.

(b) The serious nature of suspension and debarment requires that these sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Only the agency head or his/her designee may suspend or debar a TSP.

§ 102–117.300 Do the decisions on temporary nonuse, suspension and debarment go beyond the agency?

(a) Temporary nonuse does not go beyond the agency.

(b) GSA compiles and maintains a current list of all suspended or

debarred TSPs and periodically distributes the list to all agencies and the General Accounting Office.

§ 102–117.305 Where do I go for information on the process for suspending or debarring a TSP?

Refer to the Federal Acquisition Regulation (48 CFR part 9, subpart 9.4) for policies and procedures governing suspension and debarment of a TSP.

§ 102–117.310 What records must I keep on temporary nonuse, suspension or debarment of a TSP?

(a) You must set up a program consistent with your agency's internal record retention procedures to document the placement of TSPs in a nonuse, suspended or debarred status.

(b) For temporary nonuse, your records must contain the following information:

(1) Name, address, and Standard Carrier Alpha Code and Taxpayer Identification Number of each TSP placed in temporary nonuse status;

(2) The duration of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts showing the existence of such a cause;

(4) Information and arguments in opposition to the temporary nonuse period sent by the TSP or its representative; and

(5) The reviewing official's determination about keeping or removing temporary nonuse status.

(c) For suspended or debarred TSPs, your records must include the same information as paragraph (b) of this section and you must:

(1) Assure your agency does not award contracts to a suspended or debarred TSP; and

(2) Notify GSA (see § 102–117.315).

§ 102–117.315 Who must I notify on suspension or debarment of a TSP?

Agencies must report monthly any suspension or debarment actions to:

General Services Administration
Office of Acquisition Policy (MV)
1800 F Street, NW.
Washington, DC 20405
http://www.epls.arnet.gov;

Subpart J—Representation Before Regulatory Body Proceedings

§ 102–117.320 What is a transportation regulatory body proceeding?

A transportation regulatory body proceeding is a hearing before a transportation governing entity, such as a State public utility commission, the Surface Transportation Board, or the Federal Maritime Commission. The proceeding may be at the Federal or State level depending on the activity regulated.

§ 102–117.325 May my agency appear on its own behalf before a transportation regulatory body proceeding?

Generally, no executive agency may appear on its own behalf in any proceeding before a transportation regulatory body, unless the Administrator of General Services delegates the authority to the agency. The statutory authority for the Administrator of General Services to participate in regulatory proceedings on behalf of all Federal agencies is in section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481(a)(4)).

§ 102–117.330 When, or under what circumstances, would GSA delegate authority to an agency to appear on its own behalf before a transportation regulatory body proceeding?

GSA will delegate authority when it does not have the expertise, or when it is outside of GSA's purview, to make a determination on an issue such as a protest of rates, routings or excessive charges.

§ 102–117.335 How does my agency ask for a delegation to represent itself in a regulatory body proceeding?

You must send your request for delegation with enough detail to explain the circumstances surrounding the need for delegation of authority for representation to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405

§ 102–117.340 What other types of assistance may GSA provide agencies in dealing with regulatory bodies?

(a) GSA has oversight of all public utilities used by the Federal Government including transportation. There are specific regulatory requirements a TSP must meet at the State level, such as the requirement to obtain a certificate of public convenience and necessity.

(b) GSA has a list of TSPs, which meet certain criteria regarding insurance and safety, approved by DOT. You must furnish GSA with an affidavit to determine if the TSP meets the basic qualification to protect the Government's interest. As an oversight mandate, GSA coordinates this function. For further information contact:

General Services Administration
Federal Supply Service
Office of Transportation and Property Management
Travel and Transportation Management Division (FBL)
Crystal Mall Bldg. #4, Room 814
Washington, DC 20406

Subpart K—Reports

§ 102–117.345 Is there a requirement for me to report to GSA on my transportation activities?

(a) Currently, there is no requirement for reporting to GSA on your transportation activities. However, GSA will work with your agency and other agencies to develop reporting requirements and procedures. In particular, GSA will develop a Governmentwide transportation reporting system by October 1, 2002.

(b) Preliminary reporting requirements may include an electronic formatted report on the quantity shipped, locations (from and to) and cost of transportation. The following categories are examples:

(1) Dollar amount spent for transportation;

(2) Volume of weight shipped;

(3) Commodities shipped;

(4) HAZMAT shipped;

(5) Mode used for shipment;

(6) Location of items shipped (international or domestic); and

(7) Domestic subdivided by East and West (Interstate 85).

§ 102–117.350 How will GSA use reports I submit?

(a) Reporting on transportation and transportation related services will provide GSA with:

(1) The ability to assess the magnitude and key characteristics of transportation within the Government (*e.g.*, how much agencies spend; what type of commodity is shipped; *etc.*);

(2) Data to analyze and recommend changes to policies, standards, practices, and procedures to improve Government transportation; and

(3) A better understanding of how your activity relates to other agencies and your influence on the Governmentwide picture of transportation services.

(b) In addition, this information will assist you in showing your management the magnitude of your agency's transportation program and the effectiveness of your efforts to control cost and improve service.

Subpart L—Governmentwide Transportation Policy Council (GTPC)

§ 102–117.355 What is the Governmentwide Transportation Policy Council (GTPC)?

The Office of Governmentwide Policy sponsors a Governmentwide Transportation Policy Council (GTPC) to help agencies establish, improve, and maintain effective transportation management policies, practices and procedures. The council:

(a) Collaborates with private and public stakeholders to develop valid performance measures and promote solutions that lead to effective results; and

(b) Provides assistance in developing the Governmentwide transportation reporting system (see § 102–117.345).

§ 102–117.360 Where can I get more information about the GTPC?

For more information about the GTPC, contact:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://www.policyworks.gov/transportation

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

Subpart A—General

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AUTHORITY: 31 U.S.C. 3726; and 40 U.S.C. 481, *et seq.*

SOURCE: 65 FR 24569, Apr. 26, 2000, unless otherwise noted.

Subpart A—General

INTRODUCTION

§ 102–118.5 What is the purpose of this part?

The purpose of this part is to interpret statutes and other policies that assure that payment and payment mechanisms for agency transportation services are uniform and appropriate. This part communicates the policies clearly to agencies and transportation service providers (TSPs). (See § 102–118.35 for the definition of TSP.)

§ 102–118.10 What is a transportation audit?

A transportation audit is a thorough review and validation of transportation related bills. The audit must examine the validity, propriety, and conformity of the charges with tariffs, quotations, agreements, or tenders, as appropriate. Each agency must ensure that its internal transportation audit procedures prevent duplicate payments and only allow payment for authorized services, and that the TSP's bill is complete with required documentation.

§ 102–118.15 What is a transportation payment?

A transportation payment is a payment made by an agency to a TSP for the movement of goods or people and/or transportation related services.

§ 102–118.20 Who is subject to this part?

All agencies and TSPs defined in § 102–118.35 are subject to this part. Your agency is required to incorporate this part into its internal regulations.

§ 102–118.25 Does GSA still require my agency to submit its overall transportation policies for approval?

GSA no longer requires your agency to submit its overall transportation policies for approval. However, as noted in § 102–118.325, agencies must submit their prepayment audit plans for approval. In addition, GSA may from time to time request to examine your agency's transportation policies to verify the correct performance of the prepayment audit of your agency's transportation bills.

§ 102–118.30 Are Government corporations bound by this part?

No, Government corporations are not bound by this part. However, they may choose to use it if they wish.

DEFINITIONS

§ 102–118.35 What definitions apply to this part?

The following definitions apply to this part:

Agency means Executive agency, but does not include:

(1) A Government Controlled Corporation;

(2) The Tennessee Valley Authority;

(3) The Virgin Islands Corporation;

(4) The Atomic Energy Commission;

(5) The Central Intelligence Agency;

(6) The Panama Canal Commission; and

(7) The National Security Agency, Department of Defense.

NOTE TO THE DEFINITION OF AGENCY: All agencies' payments for transportation services are subject to the transportation audit provisions of section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726).

Agency claim means any demand by an agency upon a TSP for the payment of overcharges, ordinary debts, fines, penalties, administrative fees, special charges, and interest.

Bill of lading, sometimes referred to as a commercial bill of lading (but includes GBLs), is the document used as a receipt of goods, and documentary evidence of title. It is also a contract of carriage when movement is under 49 U.S.C. 10721 and 49 U.S.C. 13712.

Document reference number means the unique number on a bill of lading, Government Bill of Lading, Government Transportation Request, or transportation ticket, used to track the movement of shipments and individuals.

EDI signature means a discrete authentication code which serves in place of a paper signature and binds parties to the terms and conditions of a contract in electronic communication.

Electronic commerce means electronic techniques for performing business transactions (ordering, billing, and paying for goods and services), including electronic mail or messaging, Internet technology, electronic bulletin boards, charge cards, electronic funds transfers, and electronic data interchange.

Electronic data interchange means electronic techniques for carrying out transportation transactions using electronic transmissions of the information between computers instead of paper documents. These electronic transmissions must use established and published formats and codes as authorized by the applicable Federal Information Processing Standards.

Electronic funds transfer means any transfer of funds, other than transactions initiated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearinghouse transfers, Fed Wire transfers, and transfers made at automatic teller machines and point of sale terminals.

Government Bill of Lading (GBL) means Optional Forms 1103 and 1203, the transportation documents issued by GSA and used as a receipt of goods, evidence of title, and generally a contract of carriage.

Government contractor-issued charge card means both an individually billed travel card, which the individual is required to pay, and a centrally billed account for paying travel expenses, which the agency is required to pay.

Government Transportation Request (GTR) means Optional Form 1169, the Government document used to buy transportation services. The document normally obligates the Government to pay for the transportation services provided.

Offset means agency use of money owed by the agency to a transportation service provider (TSP) to cover a previous debt incurred to the agency by the TSP.

Ordinary debt means an amount that a TSP owes an agency other than for the repayment of an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not provided (including unused transportation tickets), duplicate payments, and amounts for which a TSP is liable because of loss and/or damage to property it transported.

Overcharge means those charges for transportation and travel services that exceed those applicable under the contract for carriage. This also includes charges more than those applicable under rates, fares and charges established pursuant to section 13712 and 10721 of the Revised Interstate Commerce Act, as amended (49 U.S.C. 13712 and 10721), or other equivalent contract, arrangement or exemption from regulation.

Postpayment audit means an audit of transportation billing documents after payment to decide their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders. This process may also include subsequent adjustments and collections actions taken against a TSP by the Government.

Prepayment audit means an audit of transportation billing documents before payment to determine their validity, propriety, and conformity with tariffs, quotations, agreements, or tenders.

Privately Owned Personal Property Government Bill of Lading, Optional Form 1203, means the agency transportation document used as a receipt of goods, evidence of title, and generally a contract of carriage. It is only available for the transportation of household goods. Use of this form is mandatory for Department of Defense, but optional for other agencies.

Rate authority means the document that establishes the legal charges for a transportation shipment. Charges included in a rate authority are those rates, fares, and charges for transportation and related services contained in tariffs, tenders, and other equivalent documents.

Released value is stated in dollars and is considered the assigned value of the cargo for reimbursement purposes, not necessarily the actual value of the cargo. Released value may be more or less than the actual value of the cargo. The released value is the maximum amount that could be recovered by the agency in the event of loss or damage for the shipments of freight and household goods. In return, when negotiating for rates and the released value is proposed to be less than the actual value of the cargo, the TSP should offer a rate lower than other rates for shipping cargo at full value. The statement of released value may be shown on any applicable tariff, tender, contract, transportation document or other documents covering the shipment.

Reparation means the payment involving a TSP to or from an agency of an improper transportation billing as determined by a postpayment audit. Improper routing, overcharges, or duplicate payments may cause such improper billing. This is different from payments to settle a claim for loss and damage to items shipped under those rates.

Standard carrier alpha code (SCAC) means an unique four-letter code assigned to each TSP by the National Motor Freight Traffic Association, Inc.

Statement of difference means a statement issued by an agency or its designated audit contractor during a prepayment audit when they determine that a TSP has billed the agency for more than the proper amount for the services. This statement tells the TSP on the invoice, the amount allowed and the basis for the proper charges. The statement also cites the applicable rate references and other data relied on for support. The agency issues a separate statement of difference for each transportation transaction.

Statement of difference rebuttal means a document used by the agency to respond to a TSP's claim about an improper reduction made against the TSP's original bill by the paying agency.

Supplemental bill means a bill for services that the TSP submits to the agency for additional payment after reimbursement for the original bill. The need to submit a supplemental bill may occur due to an incorrect first bill or due to charges which were not included on the original bill.

Taxpayer identification number (TIN) means the number required by the Internal Revenue Service to be used by the TSP in reporting income tax or other returns. For a TSP, the TIN is an employer identification number.

Transportation document (TD) means any executed agreement for transportation service, such as a bill of lading (including a Government Bill of Lading), a Government Transportation Request, or transportation ticket.

Transportation service means service involved in the physical movement (from one location to another) of products, people, household goods, and any other objects by a TSP for an agency as well as activities directly relating to or supporting that movement. Examples of this are storage, crating, or connecting appliances.

Transportation service provider (TSP) means any party, person, agent, or carrier that provides freight or passenger transportation and related services to an agency. For a freight shipment this would include packers, truckers, and storers. For passenger transportation this would include airlines, travel agents and travel management centers.

Transportation service provider claim means any demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which they now believe they are owed; and any subsequent bills from the TSP resulting from a transaction that was pre- or postpayment audited by the GSA Audit Division.

Virtual GBL (VGBL) means the use of a unique GBL number on a commercial document, which binds the TSP to the terms and conditions of a GBL.

NOTE TO § 102–118.35: 49 U.S.C. 13102, *et seq.*, defines additional transportation terms not listed in this section.

Subpart B—Ordering and Paying for Transportation and Transportation Services

§ 102–118.40 How does my agency order transportation and transportation services?

Your agency orders:

(a) Transportation of freight and household goods and related transportation services (e.g., packing, storage) with a charge card, bill of lading, purchase order (or electronic equivalent), or for domestic shipments until September 30, 2001, a Government Bill of Lading (GBL). GBLs will continue to be available after that date, if needed, for international shipments (including domestic overseas shipments).

(b) Transportation of people through the purchase of transportation tickets with a Government issued charge card (or centrally billed travel account citation), Government issued individual travel charge card, personal charge card, cash (in accordance with Department of the Treasury regulations), or in limited prescribed situations, a Government Transportation Request (GTR). See the ''U.S. Government Passenger Transportation—Handbook,'' obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.45 How does a transportation service provider (TSP) bill my agency for transportation and transportation services?

The manner in which your agency orders transportation and transportation services determines the manner in which a TSP bills for service. This is shown in the following table:

TRANSPORTATION SERVICE PROVIDER BILLING

(a) Ordering method	(b) Billing method
(1)(i) Government issued agency charge card,. (ii) Centrally billed travel account citation.	(1) Bill from charge card company (may be electronic).
(2)(i) Purchase order, ... (ii) Bill of lading, (iii) Government Bill of Lading, (iv) Government Transportation Request.	(2) Bill from TSP (may be electronic).
(3)(i) Contractor issued individual travel charge card.	(3) Voucher from employee (may be electronic).

TRANSPORTATION SERVICE PROVIDER BILLING—Continued

(a) Ordering method	(b) Billing method
(ii) Personal charge card, (iii) Personal cash.	

§ 102–118.50 How does my agency pay for transportation services?

Your agency may pay for transportation services in three ways:

(a) *Electronic funds transfer (EFT) (31 U.S.C. 3332, et seq.)*. Your agency is required by statute to make all payments by EFT unless your agency receives a waiver from the Department of the Treasury.

(b) *Check*. For those situations where EFT is not possible and the Department of the Treasury has issued a waiver, your agency may make payments by check.

(c) *Cash*. In very unusual circumstances and as a last option, your agency payments may be made in cash in accordance with Department of the Treasury regulations (31 CFR part 208).

§ 102–118.55 What administrative procedures must my agency establish for payment of freight, household goods, or other transportation services?

Your agency must establish administrative procedures which assure that the following conditions are met:

(a) The negotiated price is fair and reasonable;

(b) A document of agreement signifying acceptance of the arrangements with terms and conditions is filed with the participating agency by the TSP;

(c) The terms and conditions are included in all transportation agreements and referenced on all transportation documents (TDs);

(d) Bills are only paid to the TSP providing service under the bill of lading to your agency and may not be waived;

(e) All fees paid are accounted for in the aggregate delivery costs;

(f) All payments are subject to applicable statutory limitations;

(g) Procedures (such as an unique numbering system) are established to prevent and detect duplicate payments, properly account for expenditures and discrepancy notices;

(h) All transactions are verified with any indebtedness list. On charge card transactions, your agency must consult any indebtedness list if the charge card contract provisions allow for it; and

(i) Procedures are established to process any unused tickets.

§ 102–118.60 To what extent must my agency use electronic commerce?

Your agency should use electronic commerce (*i.e.*, electronic methods for ordering, receiving bills, and paying for transportation and transportation services) to the maximum extent possible.

§ 102–118.65 Can my agency receive electronic billing for payment of transportation services?

Yes, when mutually agreeable to the agency and the GSA Audit Division, your agency is encouraged to use electronic billing for the procurement and billing of transportation services.

§ 102–118.70 Must my agency make all payments via electronic funds transfer?

Yes, under 31 U.S.C. 3332, *et seq.*, your agency must make all payments for goods and services via EFT (this includes goods and services ordered using charge cards).

§ 102–118.75 What if my agency or the TSP does not have an account with a financial institution or approved payment agent?

Under 31 U.S.C. 3332, *et seq.*, your agency must obtain an account with a financial institution or approved payment agent in order to meet the statutory requirements to make all Federal payments via EFT unless your agency receives a waiver from the Department

of the Treasury. To obtain a waiver, your agency must contact:

The Commissioner
Financial Management Service
Department of the Treasury
401 Fourteenth Street, SW.
Washington, DC 20227
http://www.fms.treas.gov/

§ 102–118.80 Who is responsible for keeping my agency's electronic commerce transportation billing records?

Your agency's internal financial regulations will identify responsibility for recordkeeping. In addition, the GSA Audit Division keeps a central repository of electronic transportation billing records for legal and auditing purposes. Therefore, your agency must forward all relevant electronic transportation billing documents to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.85 Can my agency use a Government contractor issued charge card to pay for transportation services?

Yes, your agency may use a Government contractor issued charge card to purchase transportation services if permitted under the charge card contract or task order. In these circumstances your agency will receive a bill for these services from the charge card company.

§ 102–118.90 If my agency orders transportation and/or transportation services with a Government contractor issued charge card or charge account citation, is this subject to prepayment audit?

Generally, no transportation or transportation services ordered with a Government contractor issued charge card or charge account citation can be prepayment audited because the bank or charge card contractor pays the TSP directly, before your agency receives a bill that can be audited from the charge card company. However, if your agency contracts with the charge card or charge account provider to provide for a prepayment audit, then, as long as your agency is not liable for paying the bank for improper charges (as determined by the prepayment audit verification process), a prepayment audit can be used. As with all prepayment audit programs, the charge card prepayment audit must be approved by the GSA Audit Division prior to implementation. If the charge card contract does not provide for a prepayment audit, your agency must submit the transportation line items on the charge card to the GSA Audit Division for a postpayment audit.

§ 102–118.95 What forms can my agency use to pay transportation bills?

Your agency must use commercial payment practices and forms to the maximum extent possible; however, when viewed necessary by your agency, your agency may use the following Government forms to pay transportation bills:

(a) Standard Form (SF) 1113, Public Voucher for Transportation Charges, and SF 1113–A, Memorandum Copy;

(b) Optional Form (OF) 1103, Government Bill of Lading and OF 1103A Memorandum Copy (used for movement of things, both privately owned and Government property for official uses);

(c) OF 1169, Government Transportation Request (used to pay for tickets to move people); and

(d) OF 1203, Privately Owned Personal Property Government Bill of Lading, and OF 1203A, Memorandum Copy (used by the Department of Defense to move private property for official transfers).

NOTE TO § 102–118.95: By September 30, 2001, your agency may no longer use the GBLs (OF 1103 and OF 1203) for domestic shipments. After September 30, 2000, your agency should minimize the use of GTRs (OF 1169).

§ 102–118.100 What must my agency ensure is on each SF 1113?

Your agency must ensure during its prepayment audit of a TSP bill that the TSP filled out the Public Vouchers, SF 1113, completely including the taxpayer identification number (TIN), and standard carrier alpha code (SCAC). An SF 1113 must accompany all billings.

§ 102–118.105 Where can I find the rules governing the use of a Government Bill of Lading?

The ''U.S. Government Freight Transportation—Handbook'' contains information on how to prepare this GBL form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.110 Where can I find the rules governing the use of a Government Transportation Request?

The ''U.S. Government Passenger Transportation—Handbook'' contains information on how to prepare this GTR form. To get a copy of this handbook, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.115 Must my agency use a GBL?

No, your agency is not required to use a GBL and must use commercial payment practices to the maximum extent possible. Effective September 30, 2001, your agency must phase out the use of the Optional Forms 1103 and 1203 for domestic shipments. After this date, your agency may use the GBL solely for international shipments.

§ 102–118.120 Must my agency use a GTR?

No, your agency is not required to use a GTR. Your agency must adopt commercial practices and eliminate GTR use to the maximum extent possible.

§ 102–118.125 What if my agency uses a TD other than a GBL?

If your agency uses any other TD for shipping under its account, the requisite and the named safeguards must be in place (i.e., terms and conditions found herein and in the ''U.S. Government Freight Transportation—Handbook,'' appropriate numbering, etc.).

§ 102–118.130 Must my agency use a GBL for express, courier, or small package shipments?

No, however, in using commercial forms all shipments must be subject to the terms and conditions set forth for use of a bill of lading for the Government. Any other non-conflicting applicable contracts or agreements between the TSP and an agency involving buying transportation services for Government traffic remain binding. This purchase does not require a SF 1113. When you are using GSA's schedule for small package express delivery, the terms and conditions of that contract are binding.

102–118.135 Where are the mandatory terms and conditions governing the use of bills of lading?

The mandatory terms and conditions governing the use of bills of lading are contained in this part and the ''U.S. Government Freight Transportation Handbook.''

102–118.140 What are the major mandatory terms and conditions governing the use of GBLs and bills of lading?

The mandatory terms and conditions governing the use of GBLs and bills of lading are:

(a) Unless otherwise permitted by statute, the TSP must not demand prepayment or collect charges from the consignee. The TSP, providing service under the bill of lading, must present the original, properly certified GBL or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges, to the paying office for payment;

(b) The shipment must be made at the restricted or limited valuation specified in the tariff or classification or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the GBL or bill of lading. (This is commonly referred to as an alternation of rates);

(c) Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If

loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the nearest office of the last delivering TSP and extend to the TSP the privilege of examining the shipment;

(d) The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered to valid;

(e) Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 31 U.S.C. 3717); and

(f) Additional mandatory terms and conditions are in this part and the ''U.S. Government Freight Transportation—Handbook.''

102–118.145 Where are the mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are contained in this part and the ''U.S. Government Passenger Transportation—Handbook.''

102–118.150 What are the major mandatory terms and conditions governing the use of passenger transportation documents?

The mandatory terms and conditions governing the use of passenger transportation documents are:

(a) Government travel must be via the lowest cost available, that meets travel requirements; e.g., Government contract, fare, through, excursion, or reduced one way or round trip fare. This should be done by entering the term ''lowest coach'' on the Government travel document if the specific fare basis is not known;

(b) The U.S. Government is not responsible for charges exceeding those applicable to the type, class, or character authorized in transportation documents;

(c) The U.S. Government contractor-issued charge card must be used to the maximum extent possible to procure passenger transportation tickets. GTRs must be used minimally;

(d) Government passenger transportation documents must be in accordance with Federal Travel Regulation Chapters 300 and 301 (41 CFR chapters 300 and 301), and the ''U.S. Government Passenger Transportation—Handbook'';

(e) Interest shall accrue from the voucher payment date on overcharges made hereunder and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982;

(f) The TSP must insert on the TD any known dates on which travel commenced;

(g) The issuing official or traveler, by signature, certifies that the requested transportation is for official business;

(h) The TSP must not honor any request containing erasures or alterations unless the TD contains the authentic, valid initials of the issuing official; and

(i) Additional mandatory terms and conditions are in this part and the ''U. S. Government Passenger Transportation—Handbook.''

§ 102–118.155 How does my agency handle supplemental billings from the TSP after payment of the original bill?

Your agency must process, review, and verify supplemental billings using the same procedures as on an original billing. If the TSP disputes the findings, your agency must attempt to resolve the disputed amount.

§ 102–118.160 Who is liable if my agency makes an overpayment on a transportation bill?

If the agency conducts prepayment audits of its transportation bills, agency transportation certifying and disbursing officers are liable for any overpayments made. If GSA has granted a waiver to the prepayment audit requirement and the agency performs a postpayment audit (31 U.S.C. 3528 and 31 U.S.C. 3322) neither the certifying

nor disbursing officers are liable for the reasons listed in these two cited statutes.

§ 102–118.165 What must my agency do if it finds an error on a TSP bill?

Your agency must advise the TSP via statement of difference of any adjustment that you make either electronically or in writing within 7 days of receipt of the bill, as required by the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). This notice must include the TSP's taxpayer identification number, standard carrier alpha code, bill number and document reference number, agency name, amount requested by the TSP, amount paid, payment voucher number, complete tender or tariff authority, the applicable rate authority and the complete fiscal authority including the appropriation.

§ 102–118.170 Will GSA continue to maintain a centralized numbering system for Government transportation documents?

Yes, GSA will maintain a numbering system for GBLs and GTRs. For commercial TDs, each agency must create a unique numbering system to account for and prevent duplicate numbers. The GSA Audit Division must approve this system. Write to:

General Services Administration
Federal supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

Subpart C—Use of Government Billing Documents

TERMS AND CONDITIONS GOVERNING ACCEPTANCE AND USE OF A GOVERNMENT BILL OF LADING (GBL) OR GOVERNMENT TRANSPORTATION REQUEST (GTR) (UNTIL FORM RETIREMENT)

§ 102–118.175 Must my agency prepare for the GBL retirement?

Yes, your agency must prepare for the GBL retirement. Effective September 30, 2001, your agency must phase out the use of the SF 1103, Government Bill of Lading, GBL, and SF 1203, Privately Owned Personal Property Government Bill of Lading (PPGBLs), for domestic shipments. After September 30, 2001, your agency may use the GBL or PPGBL solely for international shipments (including domestic overseas shipments).

§ 102–118.180 Must my agency prepare for the GTR retirement?

Yes, your agency must use the GTR only in situations that do not lend themselves to the use of commercial payment methods.

§ 102–118.185 When buying freight transportation, must my agency reference the applicable contract or tender on the bill of lading (including a GBL)?

Yes, your agency must reference the applicable contract or tender when buying transportation on a bill of lading (including GBLs). However, the referenced information on a GBL or bill of lading does not limit an audit of charges.

§ 102–118.190 When buying passenger transportation must my agency reference the applicable contract?

Yes, when buying passenger transportation, your agency must reference the applicable contract on a GTR or passenger transportation document (e.g., ticket).

§ 102–118.195 What documents must a transportation service provider (TSP) send to receive payment for a transportation billing?

For shipments bought on a TD, the TSP must submit an original properly certified GBL, PPGBL, or bill of lading attached to an SF 1113, Public Voucher for Transportation Charges. The TSP must submit this package and all supporting documents to the agency paying office.

§ 102–118.200 Can a TSP demand advance payment for the transportation charges submitted on a bill of lading (including GBL)?

No, a TSP cannot demand advance payment for transportation charges submitted on a bill of lading (including GBL), unless authorized by law.

§ 102–118.205 May my agency pay an agent functioning as a warehouseman for the TSP providing service under the bill of lading?

No, your agency may only pay the TSP with whom it has a contract. The bill of lading will list the TSP with whom the Government has a contract.

§ 102–118.210 May my agency use bills of lading other than the GBL for a transportation shipment?

Yes, as long as the mandatory terms and conditions contained in this part (as also stated on a GBL) apply. The TSP must agree in writing to the mandatory terms and conditions (also found in the ''U.S. Government Freight Transportation Handbook'') contained in this part.

§ 102–118.215 May my agency pay a TSP any extra fees to pay for the preparation and use of the GBL or GTR?

No, your agency must not pay any additional charges for the preparation and use of the GBL or GTR. Your agency may not pay a TSP a higher rate than comparable under commercial procedures for transportation bought on a GBL or GTR.

§ 102–118.220 If a transportation debt is owed to my agency by a TSP because of loss or damage to property, does my agency report it to GSA?

No, if your agency has administratively determined that a TSP owes a debt resulting from loss or damage, follow your agency regulations.

§ 102–118.225 What constitutes final receipt of shipment?

Final receipt of the shipment occurs when the consignee or a TSP acting on behalf of the consignee with the agency's permission, fully signs and dates both the delivering TSP's documents and the consignee's copy of the same documents indicating delivery and/or explaining any delay, loss, damage, or shrinkage of shipment.

§ 102–118.230 What if my agency creates or eliminates a field office approved to prepare transportation documents?

Your agency must tell the GSA Audit Division whenever it approves a new or existing agency field office to prepare transportation documents or when an agency field office is no longer authorized to do so. This notice must show the name, field office location of the bureau or office, and the date on which your agency granted or canceled its authority to schedule payments for transportation service.

AGENCY RESPONSIBILITIES WHEN USING GOVERNMENT BILLS OF LADING (GBLS) OR GOVERNMENT TRANSPORTATION REQUESTS (GTRS)

§ 102–118.235 Must my agency keep physical control and accountability of the GBL and GTR forms or GBL and GTR numbers?

Yes, your agency is responsible for the physical control and accountability of the GBL and GTR stock and must have procedures in place and available for inspection by GSA. Your agency must consider these Government transportation documents to be the same as money.

§ 102–118.240 How does my agency get GBL and GTR forms?

Your agency can get GBL and GTR forms, in either blank or prenumbered formats, from:

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM–WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102–118.245 How does my agency get an assigned set of GBL or GTR numbers?

If your agency does not use prenumbered GBL and GTR forms, you may get an assigned set of numbers from:

General Services Administration
Federal Supply Service
General Products Commodity Center (7FXM–WS)
819 Taylor Street, Room 6A24
Fort Worth, TX 76102

§ 102–118.250 Who is accountable for the issuance and use of GBL and GTR forms?

Agencies and employees are responsible for the issuance and use of GBL

and GTR forms and are accountable for their disposition.

§ 102–118.255 Are GBL and GTR forms numbered and used sequentially?

Yes, GBL and GTR forms are always sequentially numbered when printed and/or used. No other numbering of the forms, including additions or changes to the prefixes or additions of suffixes, is permitted.

QUOTATIONS, TENDERS OR CONTRACTS

§ 102–118.260 Must my agency send all quotations, tenders, or contracts with a TSP to GSA?

(a) Yes, your agency must send two copies of each quotation, tender, or contract of special rates, fares, charges, or concessions with TSPs including those authorized by 49 U.S.C. 10721 and 13712, upon execution to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) When this information is in an electronic format approved by the GSA Audit Division, your agency will transfer the information electronically.

Subpart D—Prepayment Audits of Transportation Services

AGENCY REQUIREMENTS FOR PREPAYMENT AUDITS

§ 102–118.265 What is a prepayment audit?

A prepayment audit is a review of a transportation service provider (TSP) bill that occurs prior to your agency making payment to a TSP. This review compares the charges on the bill against the charge permitted under the contract, rate tender, or other agreement under which the TSP provided the transportation and/or transportation related services.

§ 102–118.270 Must my agency establish a prepayment audit program?

(a) Yes, under 31 U.S.C. 3726, your agency is required to establish a prepayment audit program. Your agency must send a preliminary copy of your prepayment audit program to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://policyworks.gov/org/main/MT

(b) The final plan must be approved and in place by April 20, 2000.

§ 102–118.275 What must my agency consider when designing and implementing a prepayment audit program?

As shown in § 102–118.45, the manner in which your agency orders transportation services determines how and by whom the bill for those services will be presented. Your agency's prepayment audit program must consider all of the methods that you use to order and pay for transportation services. With each method of ordering transportation services, your agency should ensure that each TSP bill or employee travel voucher contains enough information for the prepayment audit to determine which contract or rate tender is used and that the type and quantity of any additional services are clearly delineated. Each method of ordering transportation and transportation services may require a different kind of prepayment audit.

§ 102–118.280 What advantages does the prepayment audit offer my agency?

Prepayment auditing will allow your agency to detect and eliminate billing errors before payment and will eliminate the time and cost of recovering agency overpayments.

§ 102–118.285 What options for performing a prepayment audit does my agency have?

Your agency may perform a prepayment audit by:

(a) Creating an internal prepayment audit program;

(b) Contracting directly with a prepayment audit service provider; or

(c) Using the services of a prepayment audit contractor under GSA's multiple award schedule covering audit and financial management services.

NOTE TO § 102–118.285: Either of the choices in paragraph (a), (b) or (c) of this section might include contracts with charge card companies that provide prepayment audit services.

§ 102–118.290 Must every electronic and paper transportation bill undergo a prepayment audit?

Yes, all transportation bills and payments must undergo a prepayment audit unless your agency's prepayment audit program uses a statistical sampling technique of the bills or the Administrator of General Services grants a specific waiver from the prepayment audit requirement. If your agency chooses to use statistical sampling, all bills must be at or below the Comptroller General specified limit of $2,500.00 (31 U.S.C. 3521(b) and General Accounting Office Policy and Procedures Manual Chapter 7, obtainable from:

U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884–6015
http://www.gao.gov

§ 102–118.295 What are the limited exceptions to every bill undergoing a prepayment audit?

The limited exceptions to bills undergoing a prepayment audit are those bills subject to a waiver from GSA (which may include bills determined to be below your agency's threshold). The waiver to prepayment audit requirements may be for bills, mode or modes of transportation or for an agency or subagency.

§ 102–118.300 How does my agency fund its prepayment audit program?

Your agency must pay for the prepayment audit from those funds appropriated for transportation services.

§ 102–118.305 Must my agency notify the TSP of any adjustment to the TSP's bill?

Yes, your agency must notify the TSP of any adjustment to the TSP's bill either electronically or in writing within 7 days of receipt of the bill. This notice must refer to the TSP's bill number, agency name, taxpayer identification number, standard carrier alpha code, document reference number, amount billed, amount paid, payment voucher number, complete tender or tariff authority, including item or section number.

§ 102–118.310 Must my agency prepayment audit program establish appeal procedures whereby a TSP may appeal any reduction in the amount billed?

Yes, your agency must establish an appeal process that directs TSP appeals to an agency official who is able to provide adequate consideration and review of the circumstances of the claim. Your agency must complete the review of the appeal within 30 days.

§ 102–118.315 What must my agency do if the TSP disputes the findings and my agency cannot resolve the dispute?

(a) If your agency is unable to resolve the disputed amount with the TSP, your agency should forward all relevant documents including a complete billing history, and the appropriation or fund charged, to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) The GSA Audit Division will review the appeal of an agency's final, full or partial denial of a claim and issue a decision. A TSP must submit claims within 3 years under the guidelines established in § 102–118.460.

§ 102–118.320 What information must be on transportation bills that have completed my agency's prepayment audit?

(a) The following information must be annotated on all transportation bills that have completed a prepayment audit:

(1) The date received from a TSP;

(2) A TSP's bill number;

(3) Your agency name;

(4) A Document Reference Number (DRN);

(5) The amount billed;

(6) The amount paid;

(7) The payment voucher number;

(8) Complete tender or tariff authority, including item or section number;

(9) The TSP's taxpayer identification number (TIN);

(10) The TSP's standard carrier alpha code (SCAC);

(11) The auditor's authorization code or initials; and

(12) A copy of any statement of difference sent to the TSP.

(b) Your agency can find added guidance in the ''U.S. Government Freight Transportation—Handbook,'' obtainable from:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

MAINTAINING AN APPROVED PROGRAM

§ 102–118.325 Must I get approval for my agency's prepayment audit program?

Yes, your agency must get approval for your prepayment audit program. The highest level budget or financial official of each agency, such as the Chief Financial Officer, initially approves your agency's prepayment audit program. After internal agency approval, your agency submits the plan in writing to the GSA Audit Division for final approval.

§ 102–118.330 What are the elements of an acceptable prepayment audit program?

An acceptable prepayment audit program must:

(a) Verify all transportation bills against filed rates and charges before payment;

(b) Comply with the Prompt Payment Act (31 U.S.C. 3901, *et seq.*);

(c) Allow for your agency to establish minimum dollar thresholds for transportation bills subject to audit;

(d) Require your agency's paying office to offset debts from amounts owed to the TSP within the 3 years as per 31 U.S.C. 3726(b);

(e) Be approved by the GSA Audit Division. After the initial approval, the agency may be subject to periodic program review and reapproval;

(f) Complete accurate audits of transportation bills and notify the TSP of any adjustment within 7 calendar days of receipt;

(g) Create accurate notices to the TSPs that describe in detail the reasons for any full or partial rejection of the stated charges on the invoice. An accurate notice must include the TSP's invoice number, the billed amount, TIN, standard carrier alpha code, the charges calculated by the agency, and the specific reasons including applicable rate authority for the rejection;

(h) Forward documentation monthly to the GSA Audit Division, which will store paid transportation bills under the General Records Schedule 9, Travel and Transportation (36 CFR Chapter XII, 1228.22) which requires keeping records for 3 years. GSA will arrange for storage of any document requiring special handling (*e.g.*, bankruptcy, court case, *etc.*). These bills will be retained pursuant to 44 U.S.C. 3309 until claims have been settled;

(i) Establish procedures in which transportation bills not subject to prepayment audit (*i.e.*, bills for unused tickets and charge card billings) are handled separately and forwarded to the GSA Audit Division; and

(j) Implement a unique agency numbering system to handle commercial paper and practices (see § 102–118.55).

§ 102–118.335 What does the GSA Audit Division consider when verifying an agency prepayment audit program?

The GSA Audit Division bases verification of agency prepayment audit programs on objective cost-savings, paperwork reductions, current audit standards and other positive improvements, as well as adherence to the guidelines listed in this part.

§ 102–118.340 How does my agency contact the GSA Audit Division?

Your agency may contact the GSA Audit Division by writing to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.345 If my agency chooses to change an approved prepayment audit program, does the program need to be reapproved?

Yes, you must receive approval of any changes in your agency's prepayment audit program from the GSA Audit Division.

LIABILITY FOR CERTIFYING AND DISBURSING OFFICERS

§ 102–118.350 Does establishing a prepayment audit system or program change the responsibilities of the certifying officers?

Yes, in a prepayment audit environment, an official certifying a transportation voucher is held liable for verifying transportation rates, freight classifications, and other information provided on a transportation billing instrument or transportation request undergoing a prepayment audit (31 U.S.C. 3528).

§ 102–118.355 Does a prepayment audit waiver change any liabilities of the certifying officer?

Yes, a certifying official is not personally liable for verifying transportation rates, freight classifications, or other information provided on a GBL or passenger transportation request when the Administrator of General Services or designee waives the prepayment audit requirement and your agency uses postpayment audits.

§ 102–118.360 What relief from liability is available for the certifying official under a postpayment audit?

The agency counsel relieves a certifying official from liability for overpayments in cases where postpayment is the approved method of auditing and:

(a) The overpayment occurred solely because the administrative review before payment did not verify transportation rates; and

(b) The overpayment was the result of using improper transportation rates or freight classifications or the failure to deduct the correct amount under a land grant law or agreement.

§ 102–118.365 Do the requirements of a prepayment audit change the disbursing official's liability for overpayment?

Yes, the disbursing official has a liability for overpayments on all transportation bills subject to prepayment audit (31 U.S.C. 3322).

§ 102–118.370 Where does relief from prepayment audit liability for certifying, accountable, and disbursing officers reside in my agency?

Your agency's counsel has the authority to relieve liability and give advance opinions on liability issues to certifying, accountable, and disbursing officers (31 U.S.C. 3527).

WAIVERS FROM MANDATORY PREPAYMENT AUDIT

§ 102–118.375 Who has the authority to grant a waiver of the prepayment audit requirement?

Only the Administrator of General Services or designee has the authority to grant waivers from the prepayment audit requirement.

§ 102–118.380 How does my agency apply for a waiver from a prepayment audit of requirement?

Your agency must submit a request for a waiver from the requirement to perform a prepayment in writing to:

General Services Administration
Office of Transportation and Personal Property (MT)
1800 F Street, NW.
Washington, DC 20405
http://policyworks.gov/org/main/MT

§ 102–118.385 What must a waiver request include?

A waiver request must explain in detail how the use of a prepayment audit increases costs over a postpayment audit, decreases efficiency, involves a relevant public interest, adversely affects the agency's mission, or is not feasible for the agency. A waiver request must identify the mode or modes of transportation, agency or subagency to which the waiver would apply.

§ 102–118.390 On what basis does GSA grant a waiver to the prepayment audit requirement?

GSA issues waivers to the prepayment audit requirement based on:

(a) Cost-effectiveness;

(b) Government efficiency;

(c) Public interest; or

(d) Other factors the Administrator of General Services considers appropriate.

§ 102–118.395 How long will GSA take to respond to a waiver request?

GSA will respond to a written waiver request within 30 days from the receipt of the request.

§ 102–118.400 Must my agency renew a waiver of the prepayment audit requirements?

Yes, your agency waiver to the prepayment audit requirement will not exceed 2 years. Your agency must reapply to ensure the circumstances at the time of approval still apply.

§ 102–118.405 Are my agency's prepayment audited transportation bills subject to periodic postpayment audit oversight from the GSA Audit Division?

Yes, two years or more after starting prepayment audits, the GSA Audit Division (depending on its evaluation of the results) may subject your agency's prepayment audited transportation bills to periodic postpayment audit oversight rather than blanket postpayment audits. The GSA Audit Division will then prepare a report analyzing the success of your agency's prepayment audit program. This report will be on file at GSA and available for your review.

SUSPENSION OF AGENCY PREPAYMENT AUDIT PROGRAMS

§ 102–118.410 Can GSA suspend my agency's prepayment audit program?

(a) Yes, the Director of the GSA Audit Division may suspend your agency's prepayment audit program based on his or her determination of a systematic or frequent failure of the program to:

(1) Conduct an accurate prepayment audit of your agency's transportation bills;

(2) Abide by the terms of the Prompt Payment Act;

(3) Adjudicate TSP claims disputing prepayment audit positions of the agency regularly within 30 days of receipt;

(4) Follow Comptroller General decisions, GSA Board of Contract Appeals decisions, the Federal Management Regulation and GSA instructions or precedents about substantive and procedure matters; and/or

(5) Provide information and data or to cooperate with on-site inspections necessary to conduct a quality assurance review.

(b) A systematic or a multitude of individual failures will result in suspension. A suspension of an agency's prepayment audit program may be in whole or in part for failure to conduct proper prepayment audits.

Subpart E—Postpayment Transportation Audits

§ 102–118.415 Will the widespread mandatory use of prepayment audits eliminate postpayment audits?

No, the mandatory use of prepayment audits will not eliminate postpayment audits because:

(a) Postpayment audits will continue for those areas which do not lend themselves to the prepayment audit; and

(b) The GSA Audit Division will continue to review and survey the progress of the prepayment audit by performing a postpayment audit on the bills. The GSA Audit Division has a Congressionally mandated responsibility under 31 U.S.C. 3726 to perform oversight on transportation bill payments. During the early startup period for prepayment audits, transportation bills are subject to a possible postpayment audit to discover the effectiveness of the prepayment audit process.

§ 102–118.420 Can the Administrator of General Services waive the postpayment auditing provisions of this subpart?

Yes, in certain circumstances, the Administrator of General Services or designee may waive the postpayment

audit oversight requirements of this subpart on a case by case basis.

§ 102–118.425 Is my agency allowed to perform a postpayment audit on our transportation bills?

No, your agency must forward all transportation bills to GSA for a postpayment audit regardless of any waiver allowing for postpayment audit.

§ 102–118.430 What information must be on my agency's transportation bills submitted for a postpayment audit?

Your agency must annotate all of its transportation bills submitted for postpayment audit with:

(a) The date received from a TSP;

(b) A TSP's bill number;

(c) Your agency name;

(d) A Document Reference Number;

(e) The amount requested;

(f) The amount paid;

(g) The payment voucher number;

(h) Complete tender or tariff authority, including contract price (if purchased under the Federal Acquisition Regulation), item or section number;

(i) The TSP's taxpayer identification number; and

(j) The TSP's standard carrier alpha code (SCAC).

§ 102–118.435 What procedures does GSA use to perform a postpayment audit?

When GSA performs a postpayment audit, the GSA Audit Division has the delegated authority to implement the following procedures:

(a) Audit selected TSP bills after payment;

(b) Audit selected TSP bills before payment as needed to protect the Government's interest (i.e., bankruptcy, fraud);

(c) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of agencies;

(d) Adjudicate and settle transportation claims by and against agencies;

(e) Offset an overcharge by any TSP from an amount subsequently found to be due that TSP;

(f) Issue a Notice of Overcharge stating that a TSP owes a debt to the agency. This notice states the amount paid, the basis for the proper charge for the document reference number, and cites applicable tariff or tender along with other data relied on to support the overcharge. A separate Notice of Overcharge is prepared and mailed for each bill; and

(g) Issue a GSA Notice of Indebtedness when a TSP owes an ordinary debt to an agency. This notice states the basis for the debt, the TSP's rights, interest, penalty, and other results of nonpayment. The debt is due immediately and subject to interest charges, penalties, and administrative cost under 31 U.S.C. 3717.

§ 102–118.440 What are the postpayment audit responsibilities and roles of the GSA Audit Division?

When the GSA Audit Division performs a postpayment audit for your agency, GSA will:

(a) Examine and analyze payments to discover their validity, relevance and conformity with tariffs, quotations, contracts, agreements or tenders and make adjustments to protect the interest of an agency;

(b) Examine, adjudicate, and settle transportation claims by and against the agency;

(c) Collect from TSPs by refund, setoff, offset or other means, the amounts determined to be due the agency;

(d) Adjust, terminate or suspend debts due on TSP overcharges;

(e) Prepare reports to the Attorney General of the United States with recommendations about the legal and technical bases available for use in prosecuting or defending suits by or against an agency and provide technical, fiscal, and factual data from relevant records;

(f) Provide transportation specialists and lawyers to serve as expert witnesses, assist in pretrial conferences, draft pleadings, orders, and briefs, and participate as requested in connection with transportation suits by or against an agency;

(g) Review agency policies, programs, and procedures to determine their adequacy and effectiveness in the audit of freight or passenger transportation payments, and review related fiscal and transportation practices;

(h) Furnish information on rates, fares, routes, and related technical data upon request;

(i) Tell an agency of irregular shipping routing practices, inadequate commodity descriptions, excessive transportation cost authorizations, and unsound principles employed in traffic and transportation management; and

(j) Confer with individual TSPs or related groups and associations presenting specific modes of transportation to resolve mutual problems concerning technical and accounting matters and acquainting them with agency requirements.

§ 102–118.445 Must my agency pay for a postpayment audit when using the GSA Audit Division?

No, the expenses of postpayment audit contract administration and audit-related functions are financed from overpayments collected from the TSP's bills previously paid by the agency and similar type of refunds.

Subpart F—Claims and Appeal Procedures

GENERAL AGENCY INFORMATION FOR ALL CLAIMS

§ 102–118.450 Can a TSP file a transportation claim against my agency?

Yes, a TSP may file a transportation claim against your agency under 31 U.S.C. 3726 for:

(a) Amounts owed but not included in the original billing;

(b) Amounts deducted or set off by an agency that are disputed by the TSP;

(c) Requests by a TSP for amounts previously refunded in error by that TSP; and/or

(d) Unpaid original bills requiring direct settlement by GSA, including those subject to doubt about the suitability of payment (mainly bankruptcy or fraud).

§ 102–118.455 What is the time limit for a TSP to file a transportation claim against my agency?

The time limits on a TSP transportation claim against the Government differ by mode as shown in the following table:

TIME LIMITS ON ACTIONS TAKEN BY TSP

Mode	Freight charges	Statute
(a) Air Domestic	6 years	28 U.S.C. 2401, 2501.
(b) Air International	6 years	28 U.S.C. 2401, 2501.
(c) Freight Forwarders (subject to the IC Act).	3 years	49 U.S.C. 14705(f).
(d) Motor	3 years	49 U.S.C. 14705(f).
(e) Rail	3 years	49 U.S.C. 14705(f).
(f) Water (subject to the IC Act)	3 years	49 U.S.C. 14705(f).
(g) Water (not subject to the IC Act).	2 years	46 U.S.C. 745.
(h) TSPs exempt from regulation.	6 years	28 U.S.C. 2401, 2501.

§ 102–118.460 What is the time limit for my agency to file a court claim with a TSP for freight charges, reparations, and loss or damage to the property?

Statutory time limits vary depending on the mode and the service involved and may involve freight charges. The following tables list the time limits:

(A) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPS

Mode	Freight charges	Reparations	Loss and damage
(1) Rail	3 years 49 U.S.C. 11705	3 years 49 U.S.C. 11705	6 years. 28 U.S.C. 2415.
(2) Motor	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(3) Freight Forwarders subject to the IC Act.	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(4) Water (subject to the IC Act).	3 years 49 U.S.C. 14705(f)	3 years 49 U.S.C. 14705(f)	6 years. 28 U.S.C. 2415.
(5) Water (not subject to the IC Act).	6 years 28 U.S.C. 2415.	2 years 46 U.S.C. 821.	1 year. 46 U.S.C. 1303(6) (if subject to Carriage of Goods by Sear Act, 46 U.S.C. 1300–1315).
(6) Domestic Air	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.
(7) International Air	6 years 28 U.S.C. 2415		2 years. 49 U.S.C. 40105.

(B) TIME LIMITS ON ACTIONS TAKEN BY THE FEDERAL GOVERNMENT AGAINST TSPS EXEMPT FROM REGULATION

Mode	Freight	Reparations	Loss and damage
(1) All	6 years 28 U.S.C. 2415		6 years. 28 U.S.C. 2415.

§ 102–118.465 Must my agency pay interest on a disputed amount claimed by a TSP?

No, interest penalties under the Prompt Payment Act, (31 U.S.C. 3901, *et seq.*), are not required when payment is delayed because of a dispute between an agency and a TSP.

§ 102–118.470 Are there statutory time limits for a TSP on filing an administrative claim with the GSA Audit Division?

Yes, an administrative claim must be received by the GSA Audit Division or its designee (the agency where the claim arose) within 3 years beginning the day after the latest of the following dates (except in time of war):

(a) Accrual of the cause of action;

(b) Payment of charges for the transportation involved;

(c) Subsequent refund for overpayment of those charges; or

(d) Deductions made to a TSP claim by the Government under 31 U.S.C. 3726.

§ 102–118.475 Does interest apply after certification of payment of claims?

Yes, interest under the Prompt Payment Act (31 U.S.C. 3901, *et seq.*) begins 30 days after certification for payment by GSA.

§ 102–118.480 How does my agency settle disputes with a TSP?

As a part of the prepayment audit program, your agency must have a plan to resolve disputes with a TSP. This program must allow a TSP to appeal payment decisions made by your agency.

§ 102–118.485 Is there a time limit for my agency to issue a decision on disputed claims?

Yes, your agency must issue a ruling on a disputed claim within 30 days of receipt of the claim.

§ 102–118.490 What if my agency fails to settle a dispute within 30 days?

(a) If your agency fails to settle a dispute within 30 days, the TSP may appeal to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC 1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) If the TSP disagrees with the administrative settlement by the Audit Division, the TSP may appeal to the General Services Board of Contract Appeals.

§ 102–118.495 May my agency appeal a decision by the General Services Board of Contract Appeals (GSBCA)?

No, your agency may not appeal a decision made by the GSBCA.

§ 102–118.500 How does my agency handle a volunary refund submitted by a TSP?

(a) An agency must report all voluntary refunds to the GSA Audit Division (so that no Notice of Overcharge or financial offset occurs), unless other arrangements are made (*e.g.*, charge card refunds, etc.). These reports must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
Code: CC
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

(b) Once a Notice of Overcharge is issued by the GSA Audit Division, then any refund is no longer considered voluntary and the agency must forward the refund to the GSA Audit Division.

§ 102–118.505 Must my agency send a voluntary refund to the Treasurer of the United States?

No, your agency may keep and use voluntary refunds submitted by a TSP, if the refund was made prior to a Notice of Overcharge issued by the GSA Audit Division.

§ 102–118.510 Can my agency revise or alter a GSA Form 7931, Certificate of Settlement?

Generally, no, an agency must not revise or alter amounts on a GSA Form 7931. The only change an agency can make to a GSA Form 7931 is to change the agency financial data to a correct cite. Any GSA Form 7931 that cannot be paid (*e.g.*, an amount previously paid), must be immediately returned to

the GSA Audit Division with an explanation.

§ 102–118.515 Does my agency have any recourse not to pay a Certificate of Settlement?

No, a Certificate of Settlement is the final administrative action.

§ 102–118.520 Who is responsible for determining the standards for collection, compromise, termination, or suspension of collection action on any outstanding debts to my agency?

Under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711, *et seq.*), the Comptroller General and the Attorney General have joint responsibility for issuing standards for your agency.

§ 102–118.525 What are my agency's responsibilities for verifying the correct amount of transportation charges?

Your agency's employees are responsible for diligently verifying the correct amount of transportation charges prior to payment (31 U.S.C. 3527).

§ 102–118.530 Will GSA instruct my agency's disbursing offices to offset unpaid TSP billings?

Yes, GSA will instruct one or more of your agency's disbursing offices to deduct the amount due from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debts (31 U.S.C. 3716).

§ 102–118.535 Are there principles governing my agency's TSP debt collection procedures?

Yes, the principles governing your agency collection procedures for reporting debts to the General Accounting Office (GAO) or the Department of Justice are found in 4 CFR parts 101 through 105 and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies. The manual may be obtained by writing:

Superintendent of Documents
Government Printing Office
Washington, DC 20402
http://www.access.gpo.gov/

§ 102–118.540 Who has the authority to audit, settle accounts, and/or start collection action for all transportation services provided for my agency?

The Director of the GSA Audit Division has the authority and responsibility to audit and settle all transportation related accounts (31 U.S.C. 3726). The reason for this is that he or she has access to Governmentwide data on a TSP's payments and billings with the Government. Your agency has the responsibility to correctly pay individual transportation claims.

TRANSPORTATION SERVICE PROVIDER (TSP) FILING REQUIREMENTS

§ 102–118.545 What information must a TSP claim include?

Transportation service provider (TSP) claims received by GSA or its designee must include one of the following:

(a) The signature of an individual or party legally entitled to receive payment for services on behalf of the TSP;

(b) The signature of the TSP's agent or attorney accompanied by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the TSP; or

(c) An electronic signature, when mutually agreed upon.

§ 102–118.550 How does a TSP file an administrative claim using EDI or other electronic means?

The medium and precise format of data for an administrative claim filed electronically must be approved in advance by the GSA Audit Division. GSA will use an authenticating EDI signature to certify receipt of the claim. The data on the claim must contain proof of the delivery of goods, and an itemized bill reflecting the services provided, with the lowest charges available for service. The TSP must be able to locate, identify, and reproduce the records in readable form without loss of clarity.

§ 102–118.555 Can a TSP file a supplemental administrative claim?

Yes, a TSP may file a supplemental administrative claim. Each supplemental claim must cover charges relating to one paid transportation document.

§ 102–118.560 What is the required format that a TSP must use to file an administrative claim?

A TSP must bill for charges claimed on a SF 1113, Public Voucher for Transportation Charges, in the manner prescribed in the ''U.S. Government Freight Transportation—Handbook'' or the ''U.S. Government Passenger Transportation—Handbook.'' To get a copy of these handbooks, you may write to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.565 What documentation is required when filing an administrative claim?

An administrative claim must be accompanied by the transportation document, payment record, reports and information available to GSA and/or to the agency involved and the written and documentary records submitted by the TSP. Oral presentations supplementing the written record are not acceptable.

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR PREPAYMENT AUDITS

§ 102–118.570 If my agency denies the TSP's challenge to the statement of difference, may the TSP appeal?

Yes, the TSP may appeal if your agency denies its challenge to the statement of difference. However, the appeal must be handled at a higher level in your agency.

§ 102–118.575 If a TSP disagrees with the decision of my agency, can the TSP appeal?

Yes, the TSP may file a claim with the GSA Audit Division, which will review the TSP's appeal of your agency's final full or partial denial of a claim. The TSP may also appeal to the GSA Audit Division if your agency has not responded to a challenge within 30 days.

§ 102–118.580 May a TSP appeal a prepayment audit decision of the GSA Audit Division?

(a) Yes, the TSP may appeal to the GSA's Board of Contract Appeals (GSBCA), under guidelines established in this subpart, or file a claim with the United States Court of Federal Claims. The TSP's request for review must be received by the GSBCA in writing within 6 months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The TSP must address requests to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501–0664.

§ 102–118.585 May a TSP appeal a prepayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy available and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any of the TSP's rights. A TSP may still pursue a legal remedy through the courts.

§ 102–118.590 May my agency appeal a prepayment audit decision of the GSA Audit Division?

No, your agency may not appeal. A GSA Audit Division decision is administratively final for your agency.

§ 102–118.595 May my agency appeal a prepayment audit decision by the GSBCA?

No, your agency may not appeal a prepayment audit decision. Your agency must follow the ruling of the GSBCA.

TRANSPORTATION SERVICE PROVIDER (TSP) AND AGENCY APPEAL PROCEDURES FOR POSTPAYMENT AUDITS

§ 102–118.600 When a TSP disagrees with a Notice of Overcharge resulting from a postpayment audit, what are the appeal procedures?

A TSP who disagrees with the Notice of Overcharge may submit a written request for reconsideration to the GSA Audit Division at:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.605 What if a TSP disagrees with the Notice of Indebtedness?

If a TSP disagrees with an ordinary debt, as shown on a Notice of Indebtedness, it may:

(a) Inspect and copy the agency's records related to the claim;

(b) Seek administrative review by the GSA Audit Division of the claim decision; and/or

(c) Enter a written agreement for the payment of the claims.

§ 102–118.610 Is a TSP notified when GSA allows a claim?

Yes, the GSA Audit Division will acknowledge each payable claim using GSA Form 7931, Certificate of Settlement. The certificate will give a complete explanation of any amount that is disallowed. GSA will forward the certificate to the agency whose funds are to be charged for processing and payment.

§ 102–118.615 Will GSA notify a TSP if they internally offset a payment?

Yes, the GSA Audit Division will inform the TSP if they internally offset a payment.

§ 102–118.620 How will a TSP know if the GSA Audit Division disallows a claim?

The GSA Audit Division will furnish a GSA Form 7932, Settlement Certificate, to the TSP explaining the disallowance.

§ 102–118.625 Can a TSP request a reconsideration of a settlement action by the GSA Audit Division?

Yes, a TSP desiring a reconsideration of a settlement action may request a review by the Administrator of General Services.

§ 102–118.630 How must a TSP refund amounts due to GSA?

(a) TSPs must promptly refund amounts due to GSA, preferably by EFT. If an EFT is not used, checks must be made payable to ''General Services Administration'', including the document reference number, TSP name, bill number(s), taxpayer identification number and standard carrier alpha code, then mailed to:

General Services Administration
P.O. Box 93746
Chicago, IL 60673

(b) If an EFT address is needed, please contact the GSA Audit Division at:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

NOTE TO § 102–118.630: Amounts collected by GSA are returned to the Treasurer of the United States (31 U.S.C. 3726).

§ 102–118.635 Can the Government charge interest on an amount due from a TSP?

Yes, the Government can charge interest on an amount due from a TSP. This procedure is provided for under the Debt Collection Act (31 U.S.C. 3717), the Federal Claims Collection Standards (4 CFR parts 101 through 105), and 41 CFR part 105–55.

§ 102–118.640 If a TSP fails to pay or to appeal an overcharge, what actions will GSA pursue to collect the debt?

GSA will pursue debt collection through one of the following methods:

(a) When an indebted TSP files a claim, GSA will apply all or any portion of the amount it determines to be due the TSP, to the outstanding balance owed by the TSP, under the Federal Claims Collection Standards (4 CFR parts 101 through 105) and 41 CFR part 105–55;

(b) When the action outlined in paragraph (a) of this section cannot be taken by GSA, GSA will instruct one or more Government disbursing offices to deduct the amount due to the agency from an unpaid TSP's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a TSP (31 U.S.C. 3726) and a 10-year limitation applies on the deduction of ordinary debt (31 U.S.C. 3716);

(c) When collection cannot be accomplished through either of the procedures in paragraph (a) or (b) of this section, GSA normally sends two additional demand letters to the indebted TSP requesting payment of the amount due within a specified time. Lacking a satisfactory response, GSA may place a complete stop order against amounts otherwise payable to the indebted TSP by adding the name of that TSP to the Department of the Army ''List of Contractors Indebted to the United States''; and/or

(d) When collection actions, as stated in paragraphs (a) through (c) of this section are unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR parts 101 through 105.

§ 102–118.645 Can a TSP file an administrative claim on collection actions?

Yes, a TSP may file an administrative claim involving collection actions resulting from the transportation audit performed by the GSA directly with the GSA Audit Division. Any claims submitted to GSA will be considered ''disputed claims'' under section 4(b) of the Prompt Payment Act (31 U.S.C. 3901, *et seq.*). The TSP must file all other transportation claims with the agency out of whose activities they arose. If this is not feasible (e.g., where the responsible agency cannot be determined or is no longer in existence) claims may be sent to the GSA Audit Division for forwarding to the responsible agency or for direct settlement by the GSA Audit Division. Claims for GSA processing must be addressed to:

General Services Administration
Federal Supply Service
Audit Division (FBA)
1800 F Street, NW.
Washington, DC 20405
http://pub.fss.gsa.gov/transtrav

§ 102–118.650 Can a TSP request a review of a settlement action by the Administrator of General Services?

Yes, a TSP desiring a review of a settlement action taken by the Administrator of General Services may request a review by the GSA Board of Contract Appeals (GSBCA) or file a claim with the United States Court of Federal Claims (28 U.S.C. 1491).

§ 102–118.655 Are there time limits on a TSP request for an administrative review by the GSBCA?

(a) Yes, the GSBCA must receive a request for review from the TSP within six months (not including time of war) from the date the settlement action was taken or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later. The request must be addressed to:

GSA Board of Contract Appeals
1800 F Street, NW.
Room 7022
Washington, DC 20405

(b) The GSBCA will accept legible submissions via facsimile (FAX) on (202) 501–0664.

§ 102–118.660 May a TSP appeal a postpayment audit decision of the GSBCA?

No, a ruling by the GSBCA is the final administrative remedy and the TSP has no statutory right of appeal. This subpart governs administrative actions only and does not affect any rights of the TSPs. A TSP may still pursue a legal remedy through the courts.

§ 102–118.665 May my agency appeal a postpayment audit decision by the GSBCA?

No, your agency may not appeal a postpayment audit decision and must follow the ruling of the GSBCA.

TRANSPORTATION SERVICE PROVIDER (TSP) NON-PAYMENT OF A CLAIM

§ 102–118.670 If a TSP cannot immediately pay a debt, can they make other arrangements for payment?

Yes, if a TSP is unable to pay the debt promptly, the Director of the GSA

Audit Division has the discretion to enter into alternative arrangements for payment.

§ 102–118.675 What recourse does my agency have if a TSP does not pay a transportation debt?

If a TSP does not pay a transportation debt, GSA may refer delinquent debts to consumer reporting agencies and Federal agencies including the Department of the Treasury and Department of Justice.

PARTS 102–119—102–140 [RESERVED]

SUBCHAPTER E—TRAVEL MANAGEMENT

PART 102–141—GENERAL [RESERVED]

PARTS 102–142—102–170 [RESERVED]

SUBCHAPTER F—TELECOMMUNICATIONS

PART 102–171—GENERAL [RESERVED]

PART 102–172—TELECOMMUNICATIONS MANAGEMENT POLICY [RESERVED]

PARTS 102–173—102–190 [RESERVED]

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

PART 102–191—GENERAL [RESERVED]

PART 102–192—MAIL MANAGEMENT [RESERVED]

PART 102–193—RECORDS MANAGEMENT [RESERVED]

PART 102–194—STANDARD AND OPTIONAL FORMS PROGRAM [RESERVED]

PART 102–195—INTERAGENCY REPORTS MANAGEMENT PROGRAM [RESERVED]

PART 102–196—FEDERAL FACILITY RIDESHARING [RESERVED]

PARTS 102–197—102–220 [RESERVED]

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PART 105–1—INTRODUCTION

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AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 39 FR 25231, July 9, 1974, unless otherwise noted.

§ 105–1.000–50 Scope of part.

This part describes the method by which the General Services Administration (GSA) implements and supplements the Federal Property Management Regulations (FPMR) and implements certain regulations prescribed by other agencies. It contains procedures that implement and supplement part 101–1 of the FPMR.

Subpart 105–1.1—Regulations System

§ 105–1.100 Scope of subpart.

This subpart establishes the General Services Administration Property Management Regulations (GSPMR) and provides certain introductory material.

§ 105–1.101 General Services Administration Property Management Regulations.

The General Services Administration Property Management Regulations (GSPMR) include the GSA property management policies and procedures which, together with the Federal Property Management Regulations, certain regulations prescribed by other agencies, and various GSA orders govern the management of property and records and certain related activities of GSA. They may contain policies and procedures of interest to other agencies and the general public and are prescribed by the Administrator of General Services in this chapter 105.

§ 105–1.101–50 Exclusions.

(a) Certain GSA property management and related policies and procedures which come within the scope of this chapter 105 nevertheless may be excluded therefrom when there is justification. These exclusions may include the following categories:

(1) Subject matter that bears a security classification;

(2) Policies and procedures that are expected to be effective for a period of less than 6 months;

(3) Policies and procedures that are effective on an experimental basis for a reasonable period;

(4) Policies and procedures pertaining to other functions of GSA as well as property management functions and there is need to make the issuance available simultaneously to all GSA employees involved; and

(5) Where speed of issuance is essential, numerous changes are required in chapter 105, and all necessary changes cannot be made promptly.

(b) Property management policies and procedures issued in other than the FPMR system format under paragraphs (a)(4) and (5) of this section, shall be codified into chapter 105 at the earliest practicable date, but in any event not later than 6 months from date of issuance.

§ 105–1.102 Relationship of GSPMR to FPMR.

(a) GSPMR implement and supplement the FPMR and implement certain other regulations. They are part of the General Services Administration Regulations System. Material published in the FPMR (which has Governmentwide applicability) becomes effective throughout GSA upon the effective date of the particular FPMR material. In general, the FPMR that are implemented and supplemented shall not be repeated, paraphrased, or otherwise restated in chapter 105.

(b) Implementing is the process of expanding upon the FPMR or other Government-wide regulations.

Supplementing is the process of prescribing material for which there is no counterpart in the Government-wide regulations.

(c) GSPMR may deviate from the regulations that are implemented when a deviation (see § 105–1.110) is authorized in and explicitly referenced to such regulations. Where chapter 105 contains no material implementing the FPMR, the FPMR shall govern.

§ 105–1.104 Publication of GSPMR.

(a) Most GSPMR are published in the FEDERAL REGISTER. This practice helps to ensure that interested business concerns, other agencies, and the public are apprised of GSA policies and procedures pertaining to property and records management and certain related activities.

(b) Most GSPMR are published in cumulative form in chapter 105 of title 41 of the Code of Federal Regulations. The FEDERAL REGISTER and title 41 of the Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 105–1.106 Applicability.

Chapter 105 applies to the management of property and records and to certain other programs and activities of GSA. Unless otherwise specified, chapter 105 applies to activities outside as well as within the United States.

§ 105–1.109 Numbering.

§ 105–1.109–50 General plan.

Chapter 105 is divided into parts, subparts, and further subdivisions as necessary.

§ 105–1.109–51 Arrangement.

(a) Parts 105–2 through 105–49 are used for GSPMR that implement regulations in the corresponding parts of chapter 101. This practice results in comparable grouping by subject area without establishment of subchapters.

(b) Parts 105–50 and above are used for GSPMR that supplement regulations in the FPMR and implement regulations of other agencies. Part numbers are assigned so as to accomplish a similar subject area grouping. Regulations on advisory committee management are recodified as part 105–54 to place them in the appropriate subject area category. Regulations on standards of conduct remain in part 105–735 because the number 735 identifies regulations of the U.S. Civil Service Commission and various civil agencies on this subject.

§ 105–1.109–52 Cross-references.

(a) Within chapter 105, cross-references to the FPMR shall be made in the same manner as used within the FPMR. Illustrations of cross-references to the FPMR are:

(1) Part 101–3;

(2) Subpart 101–3.1;

(3) § 101–3.413–5.

(b) Within chapter 105, cross-references to parts, subparts, sections, and subsections of chapter 105 shall be made in a manner generally similar to that used in making cross-references to the FPMR. For example, this paragraph would be referenced as § 105–1.109–52(b).

§ 105–1.110 Deviation.

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with a policy or procedure prescribed in the Federal Property Management Regulations, are prohibited unless such deviations have been requested from and approved by the Administrator of General Services or his authorized designee. Deviations may be authorized by the Administrator of General Services or his authorized designee when so doing will be in the best interest of the Government. Request for deviations shall clearly state the nature of the deviation and the reasons for such special action.

(b) Requests for deviations from the FPMR shall be sent to the General Services Administration for consideration in accordance with the following:

(1) For onetime (individual) deviations, requests shall be sent to the address provided in the applicable regulation. Lacking such direction, requests shall be sent to the Administrator of General Services, Washington, DC 20405.

(2) For class deviations, requests shall be sent to only the Administrator of General Services.

[55 FR 1673, Jan. 18, 1990]

§ 105–1.150 Citation.

(a) In formal documents, such as legal briefs, citations of chapter 105 material shall include a citation to title 41 of the Code of Federal Regulations or other titles as appropriate; e.g., 41 CFR 105–1.150.

(b) Any section of chapter 105, for purpose of brevity, may be informally identified as ''GSPMR'' followed by the section number. For example, this paragraph would be identified as ''GSPMR 105–1.150(b).''

PART 105–8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Sec.

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105–8.171 Complaints against an occupant agency.

AUTHORITY: 29 U.S.C. 794.

SOURCE: 56 FR 9871, Mar. 8, 1991, unless otherwise noted.

§ 105–8.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105–8.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105–8.103 Definitions.

For purposes of this part, the term—

Agency means the General Services Administration (GSA), except when the context indicates otherwise.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailed materials, audio

recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation program means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''Physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation

in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105–8.140.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28); and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100–630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration of historic properties.

§§ 105–8.104—105–8.109 [Reserved]

§ 105–8.110 Self-evaluation.

(a) The agency shall, by March 9, 1992, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons consulted;

(2) A description of the areas examined and any problems identified and;

(3) A description of any modifications made or to be made.

§ 105–8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105–8.112—105–8.129 [Reserved]

§ 105–8.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to

provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licenses or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by part.

(b) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(c) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105–8.131—105–8.139 [Reserved]

§ 105–8.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 105–8.141—105–8.147 [Reserved]

§ 105–8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this part concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105–8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105–8.150 and 105–8.154, no qualified individual with handicaps shall, because

the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105–8.150 Program accessibility: Existing facilities.

§ 105–8.150–1 General.

The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This section does not—

(a) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(b) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property.

§ 105–8.150–2 Methods.

(a) *General*. The agency may comply with the requirements of § 105–8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs*. In meeting the requirements of § 105–8.105–1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to a historic property is not required because of §§ 105–8.105–1(b) or 105–8.154 alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of a historic property that cannot otherwise be made accessible;

(2) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(3) Adopting other innovative methods.

§ 105–8.150–3 Time period for compliance.

The agency shall comply with the obligations established under § 105–8.150 by May 7, 1991; except where structural changes in facilities are undertaken, such changes shall be made by March 8, 1994, but in any event as expeditiously as possible.

§ 105–8.150–4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 9, 1992; the transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs or activities to individuals with handicaps;

(b) Describe in detail the methods that will be used to make the facilities accessible;

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105–8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(d) Indicate the official responsible for implementation of the plan.

§ 105–8.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, of for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§ 105.8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105–8.153 Program accessibility: Interagency cooperation.

§ 105–8.153–1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105–8.153–2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be

completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the times frames which the actions are required to be completed.

§ 105–8.154 Program accessibility: Exceptions.

Sections 105–8.150, 105–8.152, and 105–8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105–8.155—105–8.159 [Reserved]

§ 105–8.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150.8.160 would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with §105–8.160 would result in such an alteration or such burdnes, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105–8.161—105–8.169 [Reserved]

§ 105–8.170 Compliance procedures.

§ 105–8.170–1 Applicability.

Except as provided in §105–8.170–2, §§105–8.170 through 105–8.170–13 apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105–8.170–2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

§ 105–8.170–3 Responsible Official.

The Responsible Official shall coordinate implementation of §§105–8.170 through 105–8.170–13.

§ 105–8.170–4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any persons who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this section, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is recevied by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsibile Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division (AKC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediatley.

§ 105–8.170–5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105–8.170–6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with §105–8.170–4 and over which the agency has jurisdiction. The Official shall notify the complainant and

the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant within 30 days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a position thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-day period as provided in § 105–8.170–4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this part.

(d) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

§ 105–8.170–7 Investigation/conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105–8.170–8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

(b) A description of a remedy for each violation found;

(c) A notice of the right of the complainant and the respondent to appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105–8.170–9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the

respondent with the Responsible Official within 30 days of receipt of the letter of findings required by

§ 105–8.170–7.

(b) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for a hearing within the time limit specified in § 105–8.170–9(a) or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(c) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Special Counsel for Ethics and Civil Rights.

(d) If neither party files an appeal within the time prescribed in § 105–8.170–9(a) the Responsible Official shall certify, at the expiration of the time, that the letter of findings is the final agency decision on the complaint.

§ 105–8.170–10 Acceptance of appeals.

The Special Counsel shall accept and process any timely appeal. A party may appeal to the Deputy Administrator from a decision of the Special Counsel that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Special Counsel.

§ 105–8.170–11 Hearing.

(a) Upon a timely request for a hearing, the Special Counsel shall take the necessary action to obtain the services of an Administrative law judge (ALJ) to conduct the hearing. The ALJ shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date, or there are other extenuating circumstances.

(b) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The ALJ may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(c) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act). The ALJ shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(1) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notices thereof;

(2) Hold conferences to settle, simplify, or determine the issue in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Examine witnesses and direct witnesses to testify;

(5) Receive, rule on, exclude, or limit evidence;

(6) Rule on procedural items pending before him or her; and

(7) Take any action permitted to the ALJ as authorized by this part, or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

(d) Technical rules of evidence shall not apply to hearings conducted pursuant to § 105–8.170–11, but rules or principles designed to assure production of credible evidence available and to subject testimony to cross-examination shall be applied by the ALJ whenever reasonably necessary. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(e) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(1) Persons employed by the agency shall, upon request to the agency by the ALJ, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a hearing shall, at the request of the ALJ and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(3) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(4) The ALJ may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(5) The respondent shall pay the required expenses and charges for the ALJ and court reporter.

(6) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(f) The ALJ shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Special Counsel for Ethics and Civil Rights within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Special Counsel.

(g) Within 15 days after receipt of the recommended decision of the ALJ any party may file exceptions to the decision with the Speical Counsel. Thereafter, each party will have ten days to file reply exceptions with the Special Counsel.

§ 105–8.170–12 Decision.

(a) The Special Counsel shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investitive record pursuant to § 105–8.170–9(c) or after the period for filing exceptions ends, which ever is applicable. If the Special Counsel for Ethics and Civil Rights determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Special Counsel shall have 60 days from receipt of the additional information to render the decision on the appeal. The Special Counsel shall transmit his or her decision by letter to the parties. The time limits established in this paragraph may be extended with the permission of the Assistant Attorney General. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Special Counsel shall consider the recommended decision of the ALJ and render a final decision based on the entire record. The Special Counsel may also remand the hearing record to the ALJ for a fuller development of the record.

(b) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(1) The manner in which compliance with the provisions of the decision has been achieved;

(2) The reasons any action required by the final decision has not yet been taken; and

(3) The steps being taken to ensure full compliance. The Official may retain responsibility for resolving disagreements that arise between the parties over interpretation fo the final agency decision or for specific adjudicatory decisions arising out of implementation.

§ 105–8.170–13 Delegation.

The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 105–8.171 Complaints against an occupant agency.

(a) Upon notification by an occupant agency that it has received a complete complaint alleging that the agency's

program is inaccessible because existing facilities under GSA's control are not accessible and usable by individuals with handicaps, GSA shall be jointly responsible with the agency for resolving the complaint and shall participate in making findings of fact and conclusions of law in prescribing and implementing appropriate remedies for each violation found.

(b) GSA shall make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's compliance procedures when it receives a complete complaint.

(c) Receipt of a copy of the complete complaint by GSA shall constitute notification to GSA for purposes of § 105–8.171(a).

PART 105–50—PROVISION OF SPECIAL OR TECHNICAL SERVICES TO STATE AND LOCAL UNITS OF GOVERNMENT

Sec.

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AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and sec. 302, 82 Stat. 1102; 42 U.S.C. 4222.

SOURCE: 41 FR 21451, May 26, 1976, unless otherwise noted.

§ 105–50.000 Scope of part.

This part prescribes rules and procedures governing the provision of special or technical services to State and local units of government by GSA. This part also prescribes principles governing reimbursements for such services.

§ 105–50.001 Definitions.

The following definitions are established for terms used in this part.

§ 105–50.001–1 State.

State means any of the several States of the United States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State.

§ 105–50.001–2 Political subdivision or local government.

Political subdivision or *local government* means a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or pursuant to State law.

§ 105–50.001–3 Unit of general local government.

Unit of general local government means any city, county, town, parish, village, or other general purpose political subdivision of a State.

§ 105–50.001–4 Special-purpose unit of local government.

Special-purpose unit of local government means any special district, public-purpose corporation, or other strictly limited-purpose political subdivision of a State, but shall not include a school district.

§ 105–50.001–5 Specialized or technical services.

Specialized or technical services means statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions which any department or agency of the executive branch of the Federal Government is especially equipped and authorized by law to perform.

§ 105–50.001–6 GSA.

GSA means the General Services Administration.

Subpart 105–50.1—General Provisions

§ 105–50.101 Purpose.

(a) This part 105–50 implements the provisions of Title III of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1102, 42 U.S.C. 4221–4225), the purpose of which is stated as follows:

> It is the purpose of this title to encourage intergovernmental cooperation in the conduct of specialized or technical services and provision of facilities essential to the administration of State or local governmental activities, many of which are nationwide in scope and financed in part by Federal funds; to enable state and local governments to avoid unnecessary duplication of special service functions; and to authorize all departments and agencies of the executive branch of the Federal Government which do not have such authority to provide reimbursable specialized or technical services to State and local governments.

(b) This part is consistent with the rules and regulations promulgated by the Director, Office of Management and Budget, in the Office of Management and Budget Circular No. A–97, dated August 29, 1969, issued pursuant to section 302 of the cited Act (42 U.S.C. 4222).

§ 105–50.102 Applicability.

This part is applicable to all organizational elements of GSA insofar as the services authorized to be performed in subpart 105–50.2 fall within their designated functional areas.

§ 105–50.103 Policy.

It is the policy of GSA to cooperate to the maximum extent possible with State and local units of government in providing the specialized or technical services authorized within the limitations set forth in § 105–50.104.

§ 105–50.104 Limitations.

The specialized or technical services provided under this part may be provided, in the discretion of the Administrator of General Services, only under the following conditions:

(a) Such services will be provided only to the States, political subdivisions thereof, and combinations or associations of such governments or their agencies and instrumentalities.

(b) Such services will be provided only upon the written request of a State or political subdivision thereof. Requests normally will be made by the chief executives of such entities and will be addressed to the General Services Administration as provided in § 105–50.105.

(c) Such services will not be provided unless GSA is providing similar services for its own use under the policies set forth in the Office of Management and Budget Circular No. A–76 Revised, dated August 30, 1967, subject: Policies for acquiring commercial or industrial products and services for Government use. In addition, in accordance with the policies set forth in Circular No. A–76, the requesting entity must certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(d) Such services will not be provided if they require any additions of staff or

involve outlays for additional equipment or other facilities solely for the purpose of providing such services, except where the costs thereof are charged to the user of such services. Further, no staff additions may be made which impede the implementation of, or adherence to, the employment ceilings contained in the Office of Management and Budget allowance letters.

(e) Such services will be provided only upon payment or provision for reimbursement by the unit of government making the request of salaries and all other identifiable direct and indirect costs of performing such services. For cost determination purposes, GSA will be guided by the policies set forth in the Office of Management and Budget Circular No. A–25, dated September 23, 1959, subject: User charges.

§ 105–50.105 Coordination of requests.

(a) All inquiries of a general nature concerning services GSA can provide shall be addressed to the General Services Administration (BR), Washington, D.C. 20405. The Director of Management Services, Office of Administration, shall serve as the central coordinator for such inquiries and shall assign them to the appropriate organizational element of GSA for expeditious handling.

(b) Requests for specific services may be addressed directly to Heads of Services and Staff Offices and to Regional Administrators. Section 105–50.202 describes the specific services GSA can provide.

(c) If the proper GSA organizational element is not known to the State or local unit of government, the request shall be addressed as in paragraph (a) of this section to ensure appropriate handling.

§ 105–50.106 GSA response to requests.

(a) Direct response to each request shall be made by the Head of the applicable Service or Staff Office or Regional Administrator. He shall outline the service to be provided and the fee or reimbursement required. Any special conditions concerning time and priority, etc., shall be stated. Written acceptance by the authorized State or local governmental entity shall constitute a binding agreement.

(b) Heads of Services and Staff Offices and Regional Administrators shall maintain complete records and controls of services provided on a calendar year basis to facilitate accurate, annual reporting, as required in § 105–50.401.

Subpart 105–50.2—Services Available From General Services Administration

§ 105–50.201 Agencywide mission.

(a) In its role as a central property management agency, GSA constructs, leases, operates, and maintains office and other space: procures and distributes supplies; coordinates and provides for the economic and efficient purchase, lease, sharing, and maintenance of automatic data processing equipment by Federal agencies; manages stockpiles of materials maintained for use in national emergencies; transfers excess real and personal property among Federal agencies for further use; disposes of surplus real and personal property, by donation or otherwise, as well as materials excess to stockpile requirements; operates centralized data processing centers and telecommunications and motor pool systems; operates the National Archives and Presidential libraries; and provides a variety of records management services, including the operation of centers for storing and administering records, as well as other common services.

(b) Special or technical services may be provided by many organizational elements of GSA with respect to their functional areas, but the requesting State or local agency needs only to know that the service desired is related to one or more of the functional areas described above and direct its request as provided for under § 105–50.105. State and local units of government are also encouraged to consult the ''Catalog of Federal Domestic Assistance'' as a more complete guide to the many other Federal assistance programs available to them. The catalog, issued annually and updated periodically by the Office of Management and Budget, is available through the Superintendent of

Documents, Government Printing Office, Washington, DC 20402.

§ 105–50.202 Specific services.

Within the functional areas identified in § 105–50.201, GSA can provide the services hereinafter described.

§ 105–50.202–1 Copies of statistical or other studies.

This material includes a copy of any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Federal Government or to carry out normal program responsibilities of GSA.

§ 105–50.202–2 Preparation of or assistance in the conduct of statistical or other studies.

(a) This service includes preparation of statistical or other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents and assistance in the conduct of such activities and in the preparation of such materials, provided they are of a type similar to those which GSA is authorized by law to conduct or prepare and when resources are available.

(b) Specific areas in which GSA can conduct or participate in the conduct of studies include:

(1) Space management, including assignment and utilization;

(2) Supply management, including laboratory tests and evaluations;

(3) Management of motor vehicles;

(4) Archives and records management;

(5) Automatic data processing systems; and

(6) Telecommunications and teleprocessing systems and services.

§ 105–50.202–3 Training.

(a) This training consists of the type which GSA is authorized by law to conduct for Federal personnel and others or which is similar to such training.

(b) Descriptions of the specific training courses conducted by GSA are published annually in the Interagency Training Programs bulletin, copies of which are available from the U.S. Civil Service Commission, Washington, D.C. 20415.

§ 105–50.202–4 Technical assistance incident to Federal surplus personal property.

Technical assistance will be provided in the screening and selection of surplus personal property under existing laws, provided such aid primarily strengthens the ability of the recipient in developing its own capacity to prepare proposals.

§ 105–50.202–5 Data processing services.

GSA will develop ADP logistical feasibility studies, software, systems analyses, and programs. To the extent that data processing capabilities are available, GSA will also assist in securing data processing services on a temporary, short term basis from other Federal facilities or Federal Data Processing Centers.

§ 105–50.202–6 Communications services.

GSA will continue to make its bulk rate circuit ordering services available for use by State and local governments. Under a revised tariff effective December 12, 1971, GSA will bill the State and local governments for their share of the TEL PAK costs. Services provided prior to December 12, 1971, will be billed by the contractors under the former arrangements. In addition, certain activities, such as surplus property agencies which have frequent communications with Federal agencies, will be given access to the Federal Telecommunications System switchboards.

§ 105–50.202–7 Technical information and advice.

GSA will provide technical information, personnel management systems services, and technical advice on improving logistical and management services which GSA normally provides for itself or others under existing authorities.

Subpart 105–50.3—Principles Governing Reimbursements to GSA

§ 105–50.301 Established fees.

Where there is an established schedule of fees for services to other Government agencies or the public, the schedule shall be used as the basis for reimbursement for like services furnished to State and local governments.

§ 105–50.302 Special fee schedules.

Where there is no established schedule of fees for types of service which are ordinarily reimbursed on a fee basis, such schedules may be developed and promulgated in conjunction with the Office of Administration. The fees so established shall cover all direct costs, such as salaries of personnel involved plus personnel benefits, travel, and other related expenses and all indirect costs such as management, supervisory, and staff support expenses determined or estimated from the best available records in GSA. Periodically, fees shall be reviewed for adequacy of recovery and adjusted as necessary.

§ 105–50.303 Cost basis in lieu of fees.

Where the cost of services is to be recovered on other than a fee basis, upon receipt of a request from a State or local government for such services, a written reply shall be prepared by the service or staff office receiving the request stating the basis for reimbursement for the services to be performed. The proposal shall be based on an estimate of all direct costs, such as salaries of personnel involved plus personnel benefits, travel, and other related expenses and on such indirect costs as management, supervisory, and staff support expenses. An appropriate surcharge may be developed to recover these indirect costs. The terms thereof shall be concurred in by the Director of Administration. Acceptance in writing by the requester shall constitute a binding agreement between GSA and the requesting governmental unit.

§ 105–50.304 Services provided through revolving funds.

Where the service furnished is of the type which GSA is now billing through revolving funds, reimbursement shall be obtained from State and local governments on the same basis; i.e., the same pricing method, billing forms, and billing support shall be used.

§ 105–50.304a Deposits.

Reimbursements to GSA for furnishing special or technical services to State and local units of government will be deposited to the credit of the appropriation from which the cost of providing such services has been paid or is to be charged if such reimbursements are authorized. Otherwise, the reimbursements will be credited to miscellaneous receipts in the U.S. Treasury (42 U.S.C. 4223).

§ 105–50.305 Exemptions.

(a) Single copies of existing reports covering studies and statistical compilations and other data or publications for which there is no established schedule of fees shall be furnished without charge unless significant expense is incurred in reproducing the material, in which instance the actual cost thereof shall be charged.

(b) GSA may, pursuant to section 302 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4742), admit employees of State and local units of government to training programs established for professional, administrative, or technical personnel and may waive the requirement for reimbursement in whole or in part.

Subpart 105–50.4—Reports

§ 105–50.401 Reports submitted to the Congress.

(a) The Administrator of General Services will furnish annually to the respective Committees on Government Operations of the Senate and the House of Representatives a summary report on the scope of the services provided under Title III of the act and this part.

(b) Heads of Services and Staff Offices and all Regional Administrators shall furnish the Director of Management Services, OAD, by no later than January 15 of each year, the following information concerning services provided during the preceding calendar year to State and local units of government:

(1) A brief description of the services provided, including any other pertinent data;

(2) The State and/or local unit of government involved; and

(3) The cost of GSA to provide the service, including the amount of reimbursement, if any, made by the benefitting government.

(c) Reports Control Symbol LAW–27–OA is assigned to this report.

§ 105–50.402 Reports submitted to the Office of Management and Budget.

Copies of the foregoing reports will be submitted by the Administrator to the Office of Management and Budget not later than March 30 of each year.

PART 105–51—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 105–51.001 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48024, Dec. 17, 1987; 54 FR 8913, Mar. 2, 1989]

PART 105–53—STATEMENT OF ORGANIZATION AND FUNCTIONS

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105–53.133 Information Security Oversight Office.
105–53.134 Office of Administration.
105–53.135 [Reserved]
105–53.136 Office of Congressional Affairs
105–53.137 Office of Acquisition Policy.
105–53.138 Office of General Counsel.
105–53.139 Office of the Comptroller.
105–53.140 Office of Operations and Industry Relations.
105–53.141 Office of Policy Analysis.
105–53.142 Office of Public Affairs.
105–53.143 Information Resources Management Service.
105–53.144 Federal Property Resources Service.
105–53.145 Federal Supply Service.
105–53.146 [Reserved]
105–53.147 Public Buildings Service.

Subpart C—Regional Offices

105–53.150 Organization and functions.
105–53.151 Geographic composition, addresses, and telephone numbers.

AUTHORITY: 5 U.S.C. 552(a)(1), Pub. L. 90–23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81–152, 63 Stat. 390, sec. 205(c).

SOURCE: 48 FR 25200, June 6, 1983, unless otherwise noted.

§ 105–53.100 Purpose.

This part is published in accordance with 5 U.S.C. 552 and is a general description of the General Services Administration.

Subpart A—General

§ 105–53.110 Creation and authority.

The General Services Administration was established by section 101 of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), effective July 1, 1949. The act consolidated

and transferred to the agency a variety of real and personal property and related functions fomerly assigned to various agencies. Subsequent laws and Executive orders assigned other related functions and programs.

§ 105–53.112 General statement of functions.

The General Services Administration, as a major policy maker, provides guidance and direction to Federal agencies in a number of management fields. GSA formulates and prescribes a variety of Governmentwide policies relating to procurement and contracting; real and personal property management; transportation, public transportation, public utilities and telecommunications management; automated data processing management; records management; the use and disposal of property; and the information security program. In addition to its policy role, GSA also provides a variety of basic services in the aforementioned areas to other Government agencies. A summary description of these services is presented by organizational component in subpart B.

[54 FR 26741, June 26, 1989]

§ 105–53.114 General statement of organization.

The General Services Administration is an independent agency in the executive branch of the Government. The work of the agency as a whole is directed by the Administrator of General Services, who is assisted by the Deputy Administrator. A summary description of each of GSA's major functions and organizational components is presented in subparts B and C.

§ 105–53.116 General regulations.

Regulations of the General Services Administration and its components are codified in the Code of Federal Regulations in title 1, chapters I and II; title 32, chapter XX; title 41, chapters 1, 5, 101, 105, and 201; and title 48, chapters 1 and 5. Titles 1, 32, 41, and 48 of the Code of Federal Regulations are available for review at most legal and depository libraries and at the General Services Administration Central Office and regional offices. Copies may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

[49 FR 24995, June 19, 1984]

§ 105–53.118 Locations of material available for public inspection.

GSA maintains reading rooms containing materials available for public inspection and copying at the following locations:

(a) General Services Administration, 18th & F Streets, NW., Library (Room 1033), Washington, DC 20405. Telephone 202–535–7788.

(b) Business Service Center, General Services Administration, 10 Causeway Street, Boston, MA 02222. Telephone: 617–565–8100.

(c) Business Service Center, General Services Administration, 26 Federal Plaza, NY, NY 10278. Telephone: 212–264–1234.

(d) Business Service Center, General Services Administration, Seventh & D Streets, SW., Room 1050, Washington, DC 20407. Telephone: 202–472–1804.

(e) Business Service Center, General Services Administration, Ninth & Market Streets, Room 5151, Philadelphia, PA 19107. Telephone: 215–597–9613.

(f) Business Service Center, General Services Administration, Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street, SW., Atlanta, GA 30303, Telephone: 404/331–5103.

(g) Business Service Center, General Services Administration, 230 South Dearborn Street, Chicago, IL 60604. Telephone: 312–353–5383.

(h) Business Service Center, General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131. Telephone: 816–926–7203.

(i) Business Service Center, General Services Administration, 819 Taylor Street, Fort Worth, TX 76102. Telephone: 817–334–3284.

(j) Business Service Center, General Services Administration, Denver Federal Center, Denver, CO 80225. Telephone: 303–236–7408.

(k) Business Service Center, General Services Administration, 525 Market Street, San Francisco, CA 94105. Telephone: 415–974–9000.

(l) Business Service Center, General Services Administration, 300 North Los Angeles Street, Room 3259, Los Angeles, CA 90012. Telephone: 213–688–3210.

(m) Business Service Center, General Services Administration, GSA Center, Auburn, WA 98001. Telephone: 206–931–7957.

[48 FR 25200, June 6, 1983, as amended at 49 FR 24995, June 19, 1984; 50 FR 26363, June 26, 1985; 51 FR 23229, June 26, 1986; 52 FR 23657, June 24, 1987; 53 FR 23761, June 24, 1988]

§ 105–53.120 Address and telephone numbers.

The Office of the Administrator; Office of Ethics and Civil Rights; Office of the Executive Secretariat; Office of Small and Disadvantaged Business Utilization; Office of Inspector General; GSA Board of Contract Appeals; Information Security Oversight Office; Office of Administration; Office of Congressional Affairs; Office of Acquisition Policy; Office of General Counsel; Office of the Comptroller; Office of Operations and Industry Relations; Office of Policy Analysis; Office of Public Affairs; Information Resources Management Service; Federal Property Resources Service; and Public Buildings Service are located at 18th and F Streets NW., Washington, DC 20405. The Federal Supply Service is located at Crystal Mall Building 4, 1941 Jefferson Davis Highway, Arlington, VA, however, the mailing address is Washington, DC 20406. The telephone number for the above addresses is 202–472–1082. The addresses of the eleven regional offices are provided in § 105–53.151.

[54 FR 26741, June 26, 1989]

Subpart B—Central Offices

§ 105–53.130 Office of the Administrator.

The Administrator of General Services, appointed by the President with the advice and consent of the Senate, directs the execution of all programs assigned to the General Services Administration. The Deputy Administrator, who is appointed by the Administrator, assists in directing agency programs and coordinating activities related to the functions of the General Services Administration.

§ 105–53.130–1 [Reserved]

§ 105–53.130–2 Office of Ethics and Civil Rights.

The Office of Ethics and Civil Rights, headed by the Special Counsel for Ethics and Civil Rights, is responsible for developing, directing, and monitoring the agency's programs governing employee standards of ethical conduct, equal employment opportunity, and civil rights. It is the focal point for the agency's implementation of the Ethics in Government Act of 1978. The principal statutes covering the Civil Rights Program are Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments Act of 1972, sections 501 and 504 of the Vocational Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1975, and the Equal Pay Act.

[53 FR 23761, June 24, 1988]

§ 105–53.130–3 Office of the Executive Secretariat.

The Office of the Executive Secretariat, headed by the Director of the Executive Secretariat, is responsible for policy coordination, correspondence control, and various administrative tasks in support of the Administrator and Deputy Administrator.

§ 105–53.130–4 Office of Small and Disadvantaged Business Utilization.

(a) *Creation and authority*. Public Law 95–507, October 14, 1978, an amendment to the Small Business Act and the Small Business Investment Act of 1958, established in each Federal agency having procurement authority the Office of Small and Disadvantaged Business Utilization. Each office is headed by a Director of Small and Disadvantaged Business Utilization. The Director is appointed by the head of the agency or department.

(b) *Functions*. The Director of Small and Disadvantaged Business Utilization is responsible for the implementation and execution of the functions and duties under Sections 8 and 15 of the Small Business Act to include the issuance of policy direction and guidance. The office provides information, assistance, and counseling to business concerns, including small businesses,

small socially and economically disadvantaged persons, women-owned businesses, labor surplus area concerns, and workshops operated by the blind and other severely handicapped persons. The office also conducts outreach, liaison, source listings, and seminars for small and disadvantaged businesses and coordinates and promotes procurement programs and policies.

§ 105–53.131 Office of Inspector General.

(a) *Creation and authority*. Public Law 95–452, known as the Inspector General Act of 1978, consolidated existing audit and investigation functions and established an Office of Inspector General in 11 major domestic departments and agencies, including GSA. Each office is headed by an Inspector General appointed by the President with the advice and consent of the Senate.

(b) *Functions*. The Office of Inspector General is responsible for policy direction and conduct of audit, inspection, and investigation activities relating to programs and operations of GSA; and maintaining liaison with other law enforcement agencies, the Department of Justice, and United States Attorneys on all matters relating to the detection and prevention of fraud and abuse. The Inspector General reports semiannually to the Congress through the Administrator concerning fraud, abuses, other serious problems, and deficiencies of agency programs and operations; recommends corrective action; and reports on progress made in implementing these actions.

§ 105–53.132 GSA Board of Contract Appeals.

(a) *Creation and Authority*. The GSA Board of Contract Appeals (GSBCA), headed by the Chairman, GSA Board of Contract Appeals, was established on February 28, 1979, by the Administrator of General Services as an independent administrative/judicial tribunal under the provisions of the Contract Disputes Act of 1978 (Pub. L. 95–563). The Board was granted additional authority pursuant to the Brooks Act, 40 U.S.C. 759(f) (Pub. L. 99–591).

(b) *Functions*. The GSBCA hears, considers, and decides disputes between contractors and GSA and other executive departments, agencies, and commissions under the provisions of the Contract Disputes Act of 1978, the ''Disputes'' clause of contracts, and in connection with contract related claims. The Board furnishes hearing examiners for the Suspension and Debarment Board which serves as the factfinder in suspension and proposed debarment matters. The Suspension and Debarment Board provides the suspending official with a determination as to whether adequate evidence exists to support the cause for suspension, delivers written findings of fact to the debarring official which resolve any facts in dispute based on a preponderance of the evidence and determines whether a cause for debarment exists. The Board also serves as an ad hoc body convened to consider any other type of dispute, including appeals involving violations of post-Federal employment restrictions pursuant to the Ethics in Govenment Act of 1978. Additionally, the Board hears, considers, and decides ADP protests by interested parties pursuant to the Brooks Act, 40 U.S.C. 759(f).

(c) *Regulations*. Regulations pertaining to GSBCA programs are published in 41 CFR part 5A–60. Information on availability of the regulations is provided in § 105–53.116.

[48 FR 25200, June 6, 1983, as amended at 53 FR 23761, June 24, 1988]

§ 105–53.133 Information Security Oversight Office.

(a) *Creation and authority*. The Information Security Oversight Office (ISOO), headed by the Director of ISOO, who is appointed by the Administrator with the approval of the President, was established by the Administrator on November 20, 1978, under the provisions of Executive Order 12065. Effective August 1, 1982, this authority is based upon Executive Order 12356, which superseded E.O. 12065.

(b) *Functions*. ISOO oversees and ensures, under the general policy direction of the National Security Council, Government-wide implementation of the information security program established by Executive order.

(c) *Regulations.* Regulations pertaining to ISOO Programs are published in 32 CFR chapter XX, part 2000 *et seq.*

§ 105–53.134 Office of Administration.

The Office of Administration, headed by the Associate Administrator for Administration, participates in the executive leadership of the agency; providing advice on the formulation of major policies and procedures, particularly those of a critical or controversial nature, to the Administrator and Deputy Administrator. The Office plans and administers programs in organization, productivity improvement, position management, training, staffing, position classification and pay administration, employee relations, workers' compensation, career development, GSA internal security, reporting requirements, regulations, internal directives, records correspondence procedures, Privacy and Freedom of Information Acts, printing and duplicating, mail, telecommunications, graphic design, cooperative administrative support, and support for congressional field offices. The office also serves as the central point of control for audit and inspection reports from the Inspector General and the Comptroller General of the United States; and manages the GSA internal controls evaluation, improvement, and reporting program. In addition, the office includes a secretariat to oversee Federal advisory committees.

[54 FR 26741, June 26, 1989]

§ 105–53.135 [Reserved]

§ 105–53.136 Office of Congressional Affairs.

The Office of Congressional Affairs, headed by the Associate Administrator for Congressional Affairs, is responsible for directing and coordinating the legislative and congressional activities of GSA.

[54 FR 26742, June 26, 1989]

§ 105–53.137 Office of Acquisition Policy.

(a) *Functions.* The Office of Acquisition Policy (OAP), headed by the Associate Administrator for Acquisition Policy, serves as the single focal point for GSA acquisition and contracting matters and is responsible for ensuring that the GSA procurement process is executed in compliance with all appropriate public laws and regulations and is based on sound business judgment. Also, OAP exercises Governmentwide acquisition responsibilities through its participation with the Department of Defense and the National Aeronautics and Space Administration in the development and publication of the Federal Acquisition Regulation.

(b) *Regulations.* Regulations pertaining to OAP programs are published in 48 CFR chapter 1, Federal Acquisition Regulation (FAR), and in 48 CFR chapter 5, General Services Acquisition Regulation (GSAR). Information on availability of the regulations is provided in § 105–53.116.

[52 FR 23657, June 24, 1987]

§ 105–53.138 Office of General Counsel.

Functions. The Office of General Counsel (OGC), headed by the General Counsel, is responsible for providing all legal services to the services, programs offices, staff offices, and regions of GSA with the exception of certain legal activities of the Office of Inspector General and legal activities of the Board of Contract Appeals; drafts legislation proposed by GSA; furnishes legal advice required in connection with reports on legislation proposed by other agencies; provides liaison on legal matters with other Federal agencies; coordinates with the Department of Justice in litigation matters; and reviews and gives advice on matters of contract policy and contract operations.

§ 105–53.139 Office of the Comptroller.

(a) *Functions.* The Office of the Comptroller, headed by the Comptroller, is responsible for centralized agencywide budget and accounting functions; overall allocation and administrative control of agencywide resources and financial management programs; planning, developing, and directing GSA's executive management information system; and overseeing implementation of OMB Circular A–76 agencywide.

(b) *Regulations.* Regulations pertaining to the Office of the Comptroller's programs are published in 41 CFR

part 101–2. Information on availability of the regulations is provided in § 105–53.116.

[51 FR 23230, June 26, 1986, as amended at 53 FR 23762, June 24, 1988; 54 FR 26742, June 26, 1989]

§ 105–53.140 Office of Operations and Industry Relations.

The Office of Operations and Industry Relations, headed by the Associate Administrator for Operations and Industry Relations, is responsible for formulating GSA-wide policy that relates to regional operations, supervising GSA's Regional Administrators, and planning and coordinating GSA business and industry relations and customer liaison activities.

[54 FR 26742, June 26, 1989]

§ 105–53.141 Office of Policy Analysis.

The Office of Policy Analysis, headed by the Associate Administrator for Policy Analysis, is responsible for providing analytical support, independent, objective information concerning management policies and programs, and technical and analytical assistance in the areas of policy analysis and resource allocation to the Administrator, senior officials, and organizations in GSA.

[51 FR 23230, June 26, 1986]

§ 105–53.142 Office of Public Affairs.

The Office of Public Affairs, headed by the Associate Administrator for Public Affairs, is responsible for the planning, implementation, and coordination of GSA public information and public events and employee communication activities, and managing and operating the Consumer Information Center.

[51 FR 23230, June 26, 1986]

§ 105–53.143 Information Resources Management Service.

(a) *Creation and authority*. The Information Resources Management Service (IRMS), headed by the Commissioner, Information Resources Management Service, was established as the Office of Information Resources Management on August 17, 1982 and subsequently redesignated as IRMS on November 17, 1985, by the Administrator of General Services. The Information Resources Management Service was assigned responsibility for administering the Governmentwide information resources management program, including records management, and procurement, management, and use of automatic data processing and telecommunications resources.

(b) *Functions*. IRMS is responsible for directing and managing Governmentwide programs for the procurement and use of automatic data processing (ADP), office information systems, and telecommunications equipment and services; developing and coordinating Governmentwide plans, policies, procedures, regulations, and publications pertaining to ADP; telecommunications and records management activities; managing and operating the Information Technology Fund; managing and operating the Federal Telecommunications System (FTS); planning and directing programs for improving Federal records and information management practices Governmentwide; managing and operating the Federal Information Centers; developing and overseeing GSA policy concerning automated information systems, equipment, and facilities; and providing policy and program direction for the GSA Emergency Preparedness and Disaster Support Programs.

(c) *Regulations*. Regulations pertaining to IRMS programs are published in 41 CFR chapter 201, Federal Information Resources Management Regulation (FIRMR), and 48 CFR chapters 1 and 5. Information on availability of the regulations is provided in § 105–53.116.

[51 FR 23230, June 26, 1986, as amended at 52 FR 23657, June 24, 1987]

§ 105–53.144 Federal Property Resources Service.

(a) *Creation and authority*. The Federal Property Resources Service (FPRS), headed by the Commissioner, Federal Property Resources Service, was established on July 18, 1978, by the Administrator of General Services to carry out the utilization and disposal functions for real and related personal property.

(b) *Functions*. FPRS is responsible for utilization surveys of Federal real property holdings; the reuse of excess real property; and the disposal of surplus real property.

(c) *Regulations*. Regulations pertaining to FPRS programs are published in 41 CFR chapter 1, 41 CFR chapter 101, subchapter H, and 48 CFR chapter 1. Information on availability of the regulations is provided in § 105–53.116

[54 FR 26742, June 26, 1989]

§ 105–53.145 Federal Supply Service.

(a) *Creation and authority*. The Federal Supply Service (FSS), headed by the Commissioner, FSS, was established on December 11, 1949, by the Administrator of General Services to supersede the Bureau of Federal Supply of the Department of the Treasury which was abolished by the Federal Property and Administrative Services Act of 1949. The Federal Supply Service has been known previously as the Office of Personal Property and the Office of Federal Supply and Services.

(b) *Functions*. FSS is responsible for determining supply requirements; procuring personal property and nonpersonal services; transferring excess (except ADP equipment) and donating and selling surplus personal property; managing GSA's Governmentwide transportation, traffic management, travel, fleet management, and employee relocation programs; auditing of transportation bills paid by the Government and subsequent settlement of claims; developing Federal standard purchase specifications and Commercial Item Descriptions; standardizing commodities purchased by the Federal Government; cataloging items of supply procured by civil agencies; and ensuring continuity of supply operations during defense emergency conditions.

(c) *Regulations*. Regulations pertaining to FSS programs are published in 41 CFR chapters 1 and 5; 41 CFR chapter 101, subchapters A, E, G, and H; and in 48 CFR chapters 1 and 5. Information on availability of the regulations is provided in § 105–53.116.

[49 FR 24996, June 19, 1984, as amended at 51 FR 23230, June 26, 1986]

§ 105–53.146 [Reserved]

§ 105–53.147 Public Buildings Service.

(a) *Creation and authority*. The Public Buildings Service (PBS), headed by the Commissioner, Public Buildings Service, was established on December 11, 1949, by the Administrator of General Services to supersede the Public Buildings Administration, which was abolished by the Federal Property and Administrative Services Act of 1949.

(b) *Functions*. PBS is responsible for the design, construction, management, maintenance, operation, alteration, extension, remodeling, preservation, repair, improvement, protection, and control of buildings, both federally owned and leased, in which are provided housing accommodations for Government activities; the acquisition, utilization, custody, and accountability for GSA real property and related personal property; representing the consumer interests of the Federal executive agencies before Federal and State rate regulatory commissions and providing procurement support and contracting for public utilities (except telecommunications); the Safety and Environmental Management Program for GSA managed Government-owned and-leased facilities; providing for the protection and enhancement of the cultural environment for federally owned sites, structures, and objects of historical, architectural, or archaeological significance; ensuring that Federal work space is used more effectively and efficiently; providing leadership in the development and maintenance of needed property management information systems for the Government; and coordination of GSA activities towards improving the environment, as required by the National Environmental Policy Act of 1959.

(c) *Regulations*. Regulations pertaining to PBS programs are published in 41 CFR chapter 1, 41 CFR chapter 101, subchapters D and H; and in 48 CFR chapter 1. Information on availability of the regulations is provided in § 105–53.116.

[48 FR 25200, June 6, 1983, as amended at 49 FR 24996, June 19, 1984; 52 FR 23658, June 24, 1987]

Subpart C—Regional Offices

§ 105–53.150 Organization and functions.

Regional offices have been established in 11 cities throughout the United States. Each regional office is headed by a Regional Administrator who reports to the Associate Administrator for Operations and Industry Relations. The geographic composition of each region is shown in § 105–53.151.

[54 FR 26742, June 26, 1989]

§ 105–53.151 Geographic composition, addresses, and telephone numbers.

REGIONAL OFFICES—GENERAL SERVICES ADMINISTRATION

Region and Address

No. 1. (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont); Boston FOB, 10 Causeway Street, Boston, MA 02222. Telephone: 617–565–5860.

No. 2. (Comprising the States of New Jersey and New York, the Commonwealth of Puerto Rico, and the Virgin Islands); 26 Federal Plaza, New York, NY 10278. Telephone: 212–264–2600.

No. 3. (Comprising the States of Maryland, Virginia (except those jurisdictions within the National Capital Region boundaries), West Virginia, Pennsylvania, and Delaware); Ninth and Market Streets, Philadelphia, PA 19107. Telephone 215–597–1237.

No. 4. (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee); 75 Spring Street, SW., Atlanta, GA 30303. Telephone: 404–331–3200.

No. 5. (Comprising the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin); 230 South Dearborn Street, Chicago, IL 60604. Telephone: 312–353–5395.

No. 6. (Comprising the States of Iowa, Kansas, Missouri, and Nebraska); 1500 East Bannister Road, Kansas City, MO 64131. Telephone: 816–926–7201.

No. 7. (Comprising the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas); 819 Taylor Street, Fort Worth, TX 76102. Telephone: 817–334–2321.

No. 8. (Comprising the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming); Building 41, Denver Federal Center, Denver, CO 80225. Telephone: 303–236–7329.

No. 9. (Comprising Guam and the States of Arizona, California, Hawaii, and Nevada); 525 Market Street, San Francisco, CA 94105. Telephone : 415–974–9147.

No. 10. (Comprising the States of Alaska, Idaho, Oregon, and Washington); GSA Center, Auburn, WA 98001. Telephone: 206–931–7000.

National Capital Region. (Comprising the District of Columbia; Counties of Montgomery and Prince Georges in Maryland; and the City of Alexandria and the Counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia); Seventh and D Streets, SW., Washington, DC 20407. Telephone: 202–472–1100.

[51 FR 23231, June 26, 1986, as amended at 52 FR 23658, June 24, 1987; 53 FR 23762, June 24, 1988; 54 FR 26742, June 26, 1989]

PART 105–54—ADVISORY COMMITTEE MANAGEMENT

Sec.
105–54.000 Scope of part.

Subpart 105–54.1—General Provisions

105–54.101 Applicability.
105–54.102 Definitions.
105–54.103 Policy.
105–54.104 Responsibilities.

Subpart 105–54.2—Establishment of Advisory Committees

105–54.200 Scope of subpart.
105–54.201 Proposals for establishing advisory committees.
105–54.202 Review and approval of proposals.
105–54.203 Advisory committee charters.
105–54.203–1 Preparation of charters.
105–54.203–2 Active charters file.
105–54.203–3 Submission to Library of Congress.
105–54.204 Advisory committee membership.

Subpart 105–54.3—Advisory Committee Procedures

105–54.300 Scope of subpart.
105–54.301 Meetings.
105–54.302 Committee records and reports.
105–54.303 Fiscal and administrative provisions.
105–54.304 Cost guidelines.
105–54.305 Renewal of advisory committees.
105–54.306 Amendment of advisory committee charters.
105–54.307 Termination of advisory committees.
105–54.308 Responsibilities of the Administrator.
105–54.309 Added responsibilities of service and staff office heads and regional administrators.
105–54.310 Advisory committee duties of the GSA Committee Management Officer.
105–54.311 Complaint procedures.

Subpart 105–54.4—Reports

105–54.400 Scope of subpart.
105–54.401 Reports on GSA Federal Advisory Committees.

AUTHORITY: Pub. L. 92–463 dated October 6, 1972, as amended; and 5 U.S.C. 552.

SOURCE: 53 FR 40224, Oct. 14, 1988, unless otherwise noted.

§ 105–54.000 Scope of part.

This part sets forth policies and procedures in GSA regarding the establishment, operation, termination, and control of advisory committees for which GSA has responsibility. It implements the Federal Advisory Committee Act (Pub. L. 92–463), which authorizes a system governing the establishment and operation of advisory committees in the executive branch of the Federal Government, and Executive Order 11686 of October 7, 1972, which directs the heads of all executive departments and agencies to take appropriate action to ensure their ability to comply with the provisions of the Act.

Subpart 105–54.1—General Provisions

§ 105–54.101 Applicability.

This part 105–54 applies to all advisory committees for which GSA has responsibility. This part also applies to any committee that advises GSA officials even if the committee were not established for that purpose. This applicability, however, is limited to the period of the committee's use as an advisory body. This part does not apply to:

(a) An advisory committee exempted by an Act of Congress;

(b) A local civic group whose primary function is to render a public service in connection with a Federal program;

(c) A State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(d) A meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(e) A meeting with a group initiated by the President or one or more Federal official(s) for the sole purpose of exchanging facts or information;

(f) A meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's views, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(g) A committee that is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee would be covered by the Act if it becomes primarily advisory in nature;

(h) A meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(i) A meeting of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; and

(j) A committee composed wholly of full-time officers or employees of the Federal Government.

§ 105–54.102 Definitions.

(a) The term ''advisory committee'' means any committee, board, commission, council, conference, panel, task force, or other similar group or any subcommittee thereof that is:

(1) Established by statute,

(2) Established or utilized by the President, or

(3) Established or utilized by any agency official to obtain advice or recommendations that are within the scope of his/her responsibilies.

The term ''advisory committee'' excludes the Advisory Committee on Intergovernmental Relations and any

committees composed wholly of full-time officers or employees of the Federal Government.

(b) ''Presidential advisory committee'' means any committee that advises the President. It may be established by the President or by the Congress, or may be used by the President to obtain advice or recommendations.

(c) ''Independent Presidential advisory committee'' means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

(d) ''Committee member'' means an individual who serves by appointment on a committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

(e) ''Staff member'' means any individual who serves in a support capacity to an advisory committee.

(f) ''Secretariat'' means the General Services Administration's Committee Management Secretariat. Established pursuant to the Federal Advisory Committee Act, it is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

(g) ''Utilized'' (or used), as stated in the definition of ''advisory committee'' above, refers to a situation in which a GSA official adopts a committee or other group composed in whole or in part of other than full-time Federal officers or employees with an established existence outside GSA as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his/her responsibilities in the same manner as that official would obtain advice or recommendations from an established advisory committee.

§ 105–54.103 Policy.

The basic GSA policy on committee management is as follows:

(a) Advisory committees will be formed or used by GSA only when specifically authorized by law, or by the President, or specifically determined as a matter of formal record by the Administrator of General Services to be in the public interest in connection with the performance of duties imposed on GSA by law;

(b) Advisory committees will not be used to administer a function that is the assigned responsibility of a service or staff office;

(c) The assigned responsibility of a GSA official may not be delegated to any committee;

(d) No advisory committee may be used for functions that are not solely advisory unless specifically authorized by statute or Presidential directive. Making policy decisions and determining action to be taken with respect to any matter considered by an advisory committee is solely the responsibility of GSA; and

(e) In carrying out its responsibilities, GSA will consult with and obtain the advice of interested groups substantially affected by its programs. The use of advisory committees for this purpose is considered to be in the public interest and necessary for the proper performance by GSA of its assigned functions.

§ 105–54.104 Responsibilities.

(a) Responsibility for coordination and control of committee management in GSA is vested in the Associate Administrator for Administration, who serves as the GSA Committee Management Officer (CMO). This Officer carries out the functions prescribed in section 8(b) of the Federal Advisory Committee Act. In doing so, the Officer controls and supervises the establishment, procedures, and accomplishments of GSA-sponsored advisory committees. The Organization and Productivity Improvement Division, Office of Management Services, Office of Administration, provides staff resources and furnishes the Staff Contact Person (SCP) to the CMO.

(b) The Head of each Service and Staff Office and each Regional Administrator selects a Committee Management Officer (CMO) to coordinate and control committee management within the service, staff office, or regional office and to act as liaison to the GSA

Committee Management Officer. The duties of the CMOs are as follows:

(1) Assemble and maintain the reports, records, and other papers of any GSA-sponsored committee during its existence (Arrangements may be made, however, for the Government chairperson or other GSA representative to retain custody of reports, records, and other papers to facilitate committee operations. After the committee is terminated, all committee records are disposed of following existing regulations.); and

(2) Under agency regulations in 41 CFR 105–60, carry out the provisions of 5 U.S.C. 552 with respect to the reports, records, and other papers of GSA-sponsored advisory committees.

Subpart 105–54.2—Establishment of Advisory Committees

§ 105–54.200 Scope of subpart.

This subpart prescribes the policy and procedures for establishing advisory committees within GSA.

§ 105–54.201 Proposals for establishing advisory committees.

(a) The Administrator approves the establishment of all GSA Federal Advisory Committees.

(b) When it is decided that it is necessary to establish a committee, the appropriate Head of the Service or Staff Office (HSSO) must consider the functions of similar committees in GSA to ensure that no duplication of effort will occur.

(c) The HSSO proposes the establishment of a Central Office or regional advisory committee within the scope of assigned program responsibilities. In doing so, the HSSO assures that advisory committees are established only if they are essential to the conduct of agency business. Advisory committees are established only if there is a compelling need for the committees, the committees have a truly balanced membership, and the committees conduct their business as openly as possible under the law and their mandate. Each proposal is submitted to the GSA Committee Management Officer for review and coordination and includes:

(1) A letter addressed to the Committee Management Secretariat signed by the HSSO with information copies for the Administrator, Deputy Administrator, the Associate Administrator for Congressional and Industry Relations, and the Special Counsel for Ethics and Civil Rights, describing the nature and purpose of the proposed advisory committee; why it is essential to agency business and in the public interest; why its functions cannot be performed by an existing committee of GSA, by GSA, or other means such as a public hearing; and the plans to ensure balanced membership;

(2) A notice for publication in the FEDERAL REGISTER containing the Administrator's certification that creation of the advisory committee is in the public interest and describing the nature and purpose of the committee; and

(3) A draft charter for review by the Committee Management Secretariat.

(d) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraph (c) of this section. However, they are subject to all other requirements of the Federal Advisory Committee Act.

(e) The requirements of paragraphs (a) through (c) of this section apply to any subcommittee of a chartered committee, whether its members are drawn in whole or in part from the full or parent advisory committee, that functions independently of the parent advisory committee, such as by making recommendations directly to a GSA official rather than for consideration by the chartered advisory committee.

§ 105–54.202 Review and approval of proposals.

(a) The GSA Committee Management Officer reviews each proposal to make sure it conforms with GSA policies and procedures. The Officer sends the letter of justification, including the draft charter, to the Committee Management Secretariat. The Secretariat reviews the proposal and provides its views within 15 calendar days of receipt, if possible. The Administrator retains final authority for establishing a particular advisory committee.

(b) When the Secretariat notifies the Officer that establishing the committee conforms with the Federal Advisory Committee Act, the Officer obtains the Administrator's approval of the charter and the FEDERAL REGISTER notice. The Officer publishes the notice in the FEDERAL REGISTER at least 15 calendar days before the filing of the charter under §105–54.203 with the standing committees of the Senate and the House of Representatives having legislative jurisdiction over GSA. The date of filing constitutes the date of establishment.

§ 105–54.203 Advisory committee charters.

No advisory committee may operate, meet, or take any action until the Administrator approves its charter and the Committee Management Officer sends a copy of it to the standing committees of the Senate and the House of Representatives having legislative jurisdiction over GSA.

§ 105–54.203–1 Preparation of charters.

Each committee charter contains the following information:

(a) The committee's official designation;

(b) The committee's objectives and the scope of its activities;

(c) The period of time necessary for the committee to carry out its purpose (if the committee is intended to function as a standing advisory committee, this should be made clear);

(d) The official to whom the committee reports, including the official's name, title, and organization;

(e) The agency and office responsible for providing the necessary support for the committee;

(f) A description of the duties for which the committee is responsible (if the duties are not solely advisory, the statutory or Presidential authority for additional duties shall be specified);

(g) The estimated annual operating costs in dollars and person-years for the committee;

(h) The estimated number and frequency of committee meetings;

(i) The committee's termination date, if it is less than 2 years from the date of its establishment; and

(j) The date the charter is filed. This date is inserted by the GSA Committee Management Officer after the Administrator approves the charter.

§ 105–54.203–2 Active charters file.

The GSA Committee Management Officer retains each original signed charter in a file of active charters.

§ 105–54.203–3 Submission to Library of Congress.

The GSA Committee Management Officer furnishes a copy of each charter to the Library of Congress when or shortly after copies are filed with the requisite committees of the Congress. Copies for the Library are addressed: Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

§ 105–54.204 Advisory committee membership.

(a) Advisory committees that GSA establishes represent the points of view of the profession, industry, or other group to which it relates, taking into account the size, function, geographical location, affiliation, and other considerations affecting the character of a committee. To ensure balance, the agency considers for membership a cross-section of interested persons and groups with professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This should be construed neither to limit the participation nor to compel the selection of any particular individual or group to obtain different points of view relevant to committee business. The Administrator designates members, alternates, and observers, as appropriate, of advisory committees. He/she designates a Federal officer or employee to chair or attend each meeting of each advisory committee. The Administrator also designates GSA employees to serve on advisory committees sponsored by other Government agencies. The HSSO or Regional Administrator submits nominations and letters of designation for the Administrator's signature to

the GSA Committee Management Officer and to the Special Counsel for Ethics and Civil Rights for review and forwarding to the Administrator.

(b) Discrimination is prohibited on the basis of race, color, age, national origin, religion, sex, or mental and physical handicap in selecting advisory committee members.

(c) Nominees for membership must submit a Statement of Employment and Financial Interests (provided to the nominee by the HSSO or Regional Administrator) and may not be appointed until cleared by the Designated Agency Ethics Official.

Subpart 105–54.3—Advisory Committee Procedures

§ 105–54.300 Scope of subpart.

This subpart sets forth the procedures that will be followed in the operation of advisory committees within GSA.

§ 105–54.301 Meetings.

(a) Each GSA advisory committee meeting is open to the public unless the Administrator decides otherwise;

(b) Each meeting is held at a reasonable time and in a place reasonably accessible to the public;

(c) The meeting room size is sufficient to accommodate committee members, committee or GSA staff, and interested members of the public;

(d) Any private citizen is permitted to file a written statement with the advisory committee;

(e) Any private citizen is permitted to speak at the advisory committee meeting, at the chairperson's discretion;

(f) All persons attending committee meetings at which classified information will be considered are required to have an adequate security clearance;

(g) The Designated Federal Officer (who may be either full time or permanent part-time) for each advisory committee and its subcommittees does the following:

(1) Approves or calls the meetings of the advisory committee;

(2) Approves the meeting agenda, which lists the matters to be considered at the meeting and indicates whether any part of the meeting will be closed to the public under the Government in the Sunshine Act (5 U.S.C. 552b(c)). Ordinarily, copies of the agenda are distributed to committee members before the date of the meeting;

(3) Attends all meetings (no part of a meeting may proceed in the Designated Federal Officer's absence);

(4) Adjourns the meeting when he or she determines that adjournment is in the public interest; and

(5) Chairs the meeting when asked to do so.

(h) The Committee Chairperson makes sure that detailed minutes of each meeting are kept and certifies to their accuracy. The minutes include:

(1) Time, date, and place;

(2) A list of the following persons who were present;

(i) Advisory committee members and staff;

(ii) Agency employees; and

(iii) Private citizens who presented oral or written statements;

(3) The estimated number of private citizens present;

(4) An accurate description of each matter discussed and the resolution of the matter, if any; and

(5) Copies of each report or other document the committee received, issued, or approved.

(i) The responsible HSSO or the Regional Administrator publishes at least 15 calendar days before the meeting a notice in the FEDERAL REGISTER that includes:

(1) The name of the advisory committee as chartered;

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda; and

(4) A statement whether all or part of the meeting is open to the public of closed; and if closed, the reasons why, and citing the specific exemptions of the Government is the Sunshine Act (5 U.S.C. 552b) as the basis for closure;

(j) In exceptional circumstances and when approved by the General Counsel or designee, less than 15 calendar days notice may be given, provided the reasons for doing so are included in the committee meeting notice published in the FEDERAL REGISTER;

(k) Notices to be published in the FEDERAL REGISTER are submitted to the Federal Register Liaison Officer

(CAID). At least five workdays are needed for printing of the notice;

(l) Meetings may also be announced by press release, direct mail, publication in trade and professional journals, or by notice to special interest and community groups affected by the Committee's deliberations. This procedure cannot be a substitute for FEDERAL REGISTER publication;

(m) The fact that a meeting may be closed to the public under the exemptions of the Government in the Sunshine Act does not relieve GSA of the requirement to publish a notice of it in the FEDERAL REGISTER. The Administrator may authorize an exception to this requirement for reasons of national security if the HSSO requests it at least 30 calendar days before the meeting, with the concurrence of the General Counsel of designee.

(n) An advisory committee meeting is not open to the public, nor is the attendance, appearance, or filing of statements by interested persons permitted, if the Administrator decides that the meeting is exempted under the Government in the Sunshine Act (5 U.S.C. 552b (c)) and there is sufficient reason to invoke the exemption. If only part of the meeting concerns exempted matters, only that part is closed. The HSSO or Regional Administrator submits any decisions concerning the closing of meetings in writing to the Administrator for approval at least 30 calendar days in advance of the meeting. These decisions clearly set forth the reasons for doing so, citing the specific exemptions used from the Government in the Sunshine Act in the meeting notice published in the FEDERAL REGISTER. They are made available to the public on request. The Administrator may waive the 30-day requirement when a lesser period of time is requested and adequately justified.

(o) If any meeting or portion of a meeting is closed to public attendance, the advisory committee issues a report at lease annually setting forth a summary of its activities and such related matters as would be informative to the public, consistent with the policy of 5 U.S.C. 552(b). Notice of the availability of the report and instructions on how to gain access to it are published in the FEDERAL REGISTER no later than 60 days after its completion. In addition, copies of the report are filed with the Library of Congress.

(p) The General Counsel reviews all requests to close meetings.

(q) The HSSO or Regional Administrator publishes the meeting notices in the FEDERAL REGISTER, including the reasons why all or part of the meeting is closed, citing the specified exemptions used from the Government in the Sunshine Act.

§ 105–54.302 Committee records and reports.

(a) Subject to the Freedom of Information Act (5 U.S.C. 552), the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were available to or prepared for or by a GSA advisory committee are available (until the committee ceases to exist) for public inspection and copying in the office of the Government Chairperson or Designated Federal Officer. Requests to inspect or copy these records are processed under 41 CFR 105–60.4. Except where prohibited by a contract entered into before January 5, 1973, copies of transcripts, if any, of committee meetings are made available by the Government chairperson or Designated Federal Officer to any person at the cost of duplication. After the committee's work ends, disposition of the committee documents and the release of information from them are made in accordance with Federal records, statutes, and regulations.

(b) Subject to 5 U.S.C. 552(b) and instructions of the Committee Management Secretariat, the Government chairperson or Designated Federal Officer files at least eight copies of each report an advisory committee makes, including any report on closed meetings with the Library of Congress at the time of its issuance. Where appropriate, the chairperson also files copies of background papers that consultants to the advisory committee prepare with the Library of Congress. The transmittal letter identifies the materials being furnished, with a copy of the transmittal provided to the GSA Committee Management Officer.

§ 105–54.303 Fiscal and administrative provisions.

(a) Each HSSO and each Regional Administrator ensures that under established GSA procedures, records are kept that fully disclose the disposition of funds at the disposal of an advisory committee and the nature and extent of the committee's activities.

(b) When GSA is assigned to provide administrative support for a Presidential advisory committee, the Agency Liaison Coordinator in the Office of the Deputy Regional Administrator, National Capital Region, as a part of its support, arranges with the Office of Finance, Office of the Comptroller, for maintaining all financial records.

(c) Unless otherwise provided in a Presidential order, statute, or other authority, the GSA service or staff office sponsoring an advisory committee provides support services for the committee.

(d) The guidelines in paragraph (e) through (l) of this section are established under section 7(d) of the Federal Advisory Committee Act, 86 Stat. 773. They apply to the pay of members, staff, and consultants of an advisory committee, except that nothing in this paragraph will affect a rate of pay or a limitation on a rate of pay that is established by statute or a rate of pay established under the General Schedule classification and pay system in Chapter 51 and Subchapter III of Chapter 53 of Title 5, U.S.C.

(e) The members of GSA advisory committee established pursuant to the Administrator's authority under section 205(g) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(g)), are not compensated, since, by law, members so appointed shall service without compensation. A person who (without regard to his or her service with an advisory committee) is a full-time Federal employee will normally receive compensation at the rate at which he or she would otherwise be compensated.

(f) When required by law, the pay of the members of GSA advisory committees will be fixed to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated as provided in paragraph (h) of this section. In determining an appropriate rate of pay for the members, GSA must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. GSA may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS–15 under the General Schedule, unless a higher rate is mandated by statute, or the Administrator has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the Administrator annually. Accordingly, the Administrator may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GSA 18, as provided in 5 U.S.C. 5332.

(g) The pay of each staff member of an advisory committee is fixed at a rate of the General Schedule, General Management Schedule, or Senior Executive Service pay rate in which the staff member's position would be placed (5 U.S.C. Chapter 51). GSA cannot fix the pay of a staff member higher than the daily equivalent of the maximum rate for GS–15 unless the Administrator decides that under the General Schedule, General Management Schedule, or Senior Executive Service classification system, the staff member's position should be higher than GS–15. The Administrator must review this decision annually.

(1) In establishing compensation rates, GSA must comply with applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee serves with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. A staff member who is a non-Federal employee is appointed under agency procedures, after consultation with the advisory committee.

(h) The pay of a consultant to an advisory committee will be fixed after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The rate of

pay will not exceed the maximum rate of pay which the agency may pay experts and consultants under 5 U.S.C. 3109 and must be in accordance with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(i) Advisory committee and staff members, while performing their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem instead of subsistence, as authorized by 5 U.S.C. 5703 for persons employed intermittently in the Government service.

(j) Members of an advisory committee and its staff who are blind or deaf or who otherwise qualify as handicapped persons (under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and who do not otherwise qualify for assistance under 5 U.S.C. 3102, as an employee of an agency (under section 3102(a)(1) of Title 5), may be provided the services of a personal assistant.

(k) Under this paragraph, GSA may accept the gratuitous services of a member, consultant, or staff member of an advisory committee who agrees in advance to serve without compensation.

(l) A person who immediately before his or her service with an advisory committee was a full-time Federal employee may receive compensation at the rate at which he or she was compensated as a Federal employee.

§ 105–54.304 Cost guidelines.

(a) The reporting and estimating of the costs of advisory committees include direct obligations for the following items:

(1) Pay compensation of committee members; consultants to the committee; all permanent, temporary, or part-time (GM, GS, WB, or other) positions which are a part of or support the committee; and all overtime related to committee functions (Compensation should reflect actual or estimated Federal person-years or parts thereof devoted to a committee's activities. It includes the compensation of Federal employees assigned to committees, on a reimbursable or nonreimbursable basis, from agencies or departments other than to which the committee reports.);

(2) Personnel benefits associated with the above compensation (13 percent of basic payroll);

(3) Travel costs (including per diem) of committee members; consultants; and all permanent, temporary, or part-time positions which are a part of or support the committee;

(4) Transportation of things, communications, and printing and reproduction;

(5) Rent for additional space acquired for committee use;

(6) Other services required by the committee, including data processing services, management studies and evaluations, contractual services, and reimbursable services; and

(7) Supplies, materials, and equipment acquired for committee use.

(b) The reporting and estimating of the cost of advisory committees does not include indirect or overhead costs; e.g., the costs of the committee management system (committee management officers, etc.).

§ 105–54.305 Renewal of advisory committees.

(a) Each advisory committee being continued is renewed for successive 2-year periods beginning with the date when it was established according to the following, except for statutory advisory committees: (For renewal of statutory advisory committees, see paragraph (b) of this section.)

(1) Advisory committees are not renewed unless there is a compelling need for them, they have balanced membership, and they conduct their business as openly as possible under the law.

(2) The renewal of a committee requires that the responsible HSSO submit to the GSA Committee Management Officer the following:

(i) An updated charter with an explanation of the need for the renewal of the committee. The charter and explanation are furnished 60 calendar days before the 2-year anniversary date of the committee.);

(ii) A letter signed by the HSSO to the Director, Committee Management Secretariat, with information copies to the Administrator and the Deputy Administrator, setting forth:

(A) An explanation of why the committee is essential to the conduct of agency business and is in the public interest;

(B) GSA's plan to attain balanced membership of the committee; and

(C) An explanation of why the committee's functions cannot be performed by GSA, another existing GSA advisory committee, or other means such as a public hearing;

(iii) A notice for publication in the FEDERAL REGISTER describing the nature and purpose of the committee and containing a certification by the Administrator that renewing the advisory committee is in the public interest.

(3) On receiving the above documents, the GSA Committee Management Officer submits the renewal letter to the Committee Management Secretariat not more than 60 calendar days nor less than 30 days before the committee expires. Following receipt of the Committee Management Secretariat's views on the committee renewal, the Officer obtains the Administrator's approval of the charter and the FEDERAL REGISTER notice. The Officer publishes notice of the renewal in the FEDERAL REGISTER and files copies of the updated charter. The 15-day notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) Each statutory advisory committee is renewed by the filing of a renewal charter upon the expiration of each successive 2-year period following the date of enactment of the statute establishing the committee according to the following:

(1) The procedures in paragraph (a)(2) of this section apply to the renewal of a statutory committee except that neither prior consultation with the Committee Management Secretariat nor a FEDERAL REGISTER notice is required. Accordingly, the letter that paragraph a(2)(ii) requires is sent to the Administrator rather than the Committee Mangement Secretariat. Due to the nature of a committee the law established, the explanation of the need to continue the committee's existence is less extensive than the explanation for the continuation of a non-statutory committee; and

(2) The GSA Committee Management Officer provides the Committee Management Secretariat with a copy of the filed charter.

(c) An advisory commitee required to file a new charter may not take any action other than preparing the charter between the date it is to be filed and the date it is actually filed.

§ 105–54.306 Amendment of advisory committee charters.

(a) A charter is amended when GSA decides that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the committee or modifying the estimated number or frequency of meetings, or they may be major dealing with the basic objectives or composition of the committee. The Administrator retains final authority for amending the charter of an advisory committee. Amending an existing advisory committee charter does not constitute renewal of the committee.

(b) To make a minor amendment, the Administrator approves the amended charter and has it filed according to § 105–54.203–1.

(c) To make a major amendment, the Committee Management Officer submits an amended charter and a letter to the Committee Management Secretariat, signed by the HSSO with the concurrence of the General Counsel or designee, requesting the Secretariat's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat reviews the proposed changes and notifies the Committee Management Officer of its views within 15 calendar days of receiving it, if possible. The Administrator has the charter filed according to § 105–54.203–1.

(d) Amending an existing charter does not constitute renewal of the committee.

§ 105–54.307 Termination of advisory committees.

(a) The sponsoring HSSO terminates an advisory commitee that has fulfilled the purpose stated in its charter. The official takes action to rescind any existing orders relating to the committee and to notify committee members, the

GSA Committee Management Officer, and the Committee Management Secretariat of the termination.

(b) Failing to continue an advisory committee by the 2-year anniversary date terminates the committee, unless its duration is provided for by law.

§ 105–54.308 Responsibilities of the Administrator.

The Administrator must ensure:

(a) Compliance with the Federal Advisory Committee Act and this chapter;

(b) Issuance of administrative guidelines and management controls that apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer to carry out the functions specified in section 89(b) of the Federal Advisory Committee Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(f) The appointment of a Designated Federal Officer for each advisory committee and its subcommittee;

(g) The opportunity for reasonable public participation in advisory committee activities; and

(h) That the number of committee members is limited to the fewest necessary to accomplish committee objectives.

§ 105–54.309 Added responsibilities of service and staff office heads and regional administrators.

(a) No later than the first meeting of an advisory committee, submit to committee members, committee staff, consultants, and appropriate agency management personnel a written statement of the purpose, objectives, and expected accomplishments of the committee;

(b) Solicit in writing or in a formal meeting at least annually the views of committee members on the effectiveness, activities, and management of the committee, including recommendations for improvement. Review comments to determine whether improvements or corrective action is warranted. Retain recommendations until the committee is terminated or renewed.

(c) Involve key management personnel of the agency whose interests are affected by the committee in committee meetings, including reviewing reports and establishing agendas.

(d) Periodically, but not less than annually, review the level of committee staff suport to make sure that expenditures are justified by committee activity and benefit to the Government.

(e) Monitor the attendance and participation of committee members and consider replacing any member who misses a substantial number of scheduled meetings.

(f) Establish meeting dates and distribute agendas and other materials well in advance.

§ 105–54.310 Advisory committee duties of the GSA Committee Management Officer.

In addition to implementing the provisions of section 8(b) of the Federal Advisory Committee Act, the GSA Committee Management Officer carries out all responsibilities delegated by the Administrator. The Officer ensures that sections 10(b), 12(a), and 13 of the Act are implemented by GSA to provide for appropriate record keeping. Records include, but are not limited to:

(a) A set of approved charters and membership lists for each advisory committee;

(b) Copies of GSA's portion of the Annual Report of Federal Advisory Committees.

(c) Guidelines on committee management operations and procedures as maintained and updated; and

(d) Determinations to close advisory committee meetings.

§ 105–54.311 Complaint procedures.

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review under 41 CFR 105–60, which implements the Freedom of Information Act. (See GSA Order, GSA regulations under the ''Freedom of Information Act'' (ADM 7900.3A).)

(b) Aggrieved individuals or organizations may file written complaints on

matters not involving access to documents with the Deputy Administrator, General Services Administration, Washington, DC 20405. Complaints must be filed within 90 calendar days from the date the grievance arose. The Deputy Administrator promptly acts on each complaint and notifies the complainant in writing of the decision.

Subpart 105–54.4—Reports

§ 105–54.400 Scope of subpart.

This subpart sets forth the reports required by this part 105–54 and prescribes instructions for submission of the reports.

§ 105–54.401 Reports on GSA Federal Advisory Committees.

(a) The Committee Management Secretariat periodically issues reporting instructions and procedures. The GSA Committee Management Officer files a report each fiscal year providing program, financial, and membership information. The Secretariat uses the information in preparing recommendations and status reports on advisory committee matters and in assisting the President in preparing and submitting a fiscal year report to the Congress. Instructions for preparing GSA's submission are provided by the GSA Committee Management Officer.

(b) Reports on closed meetings are required as specified in § 105–54.301(o).

PART 105–55—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

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AUTHORITY: 31 U.S.C. 3701–3719; Pub. L. 97–365, 96 Stat. 1754.

SOURCE: 50 FR 37531, Sept. 16, 1985, unless otherwise noted.

§ 105–55.001 Background.

The Department of Justice and the General Accounting Office have jointly issued amended Federal Claims Collection Standards (4 CFR parts 101–105) which reflect changes to the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3719) made by the passage of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754). The preamble to the amended Federal Claims Collection Standards instructs individual agencies to adopt their own regulations as to detailed procedures in furtherance of the Federal Claims Collection Standards. Additionally, the Debt Collection Act of 1982 directs, as reflected in the Federal Claims Collection Standards, that each agency must prescribe regulations on collecting by administrative offset and that each agency may prescribe regulations identifying circumstances appropriate to waive collection of interest and charges in conformity with the Federal Claims Collection Standards.

§ 105–55.002 Purpose.

In keeping with the suggestion in the preamble to the amended Federal Claims Collection Standards and the directives in the Debt Collection Act of 1982 and the Federal Claims Collection Standards as to administrative offset and the collection of interest and charges, this part provides procedures for the General Services Administration to collect, compromise, or terminate collection action on claims owed to the United States arising from activities under GSA jurisdiction. It implements the Federal Claims Collection Act as amended by the Debt Collection Act. It supplements the regulations published jointly by the General Accounting Office and the Department of Justice. It sets forth procedures by which GSA:

(a) Will collect claims owed to the United States;

(b) Will determine and collect interest and other charges on those claims;

(c) Will compromise claims; and

(d) Will refer unpaid claims for litigation.

§ 105–55.003 Applicability.

(a) This part applies to all claims due the United States under the Federal

Claims Collection Act, as amended by the Debt Collection Act, arising from activities under the jurisdiction of the General Services Administration, except for the collection by administrative offset of those claims arising out of contracts subject to the Contracts Disputes Act of 1982, 41 U.S.C. 601 et. seq. The word ''claims'' includes but is not limited to amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest and other sources.

(b) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulation published under the authority of 31 U.S.C. 3726 (see 41 CFR part 101–41, administered by the Director, Office of Transportation Audits) and are otherwise excepted from these regulations.

[50 FR 37531, Sept. 16, 1985, as amended at 52 FR 46468, Dec. 8, 1987]

§ 105–55.004 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the claim;

(2) The amount of the claim;

(3) The date when payment is due; (30 days from date of mailing or hand delivery of the initial demand for payment);

(4) The provision for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date (See § 105–55.005 for details regarding interest, administrative charges, and penalty charges.)

(5) The intent of the agency to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date, has not requested a review of the claim within the agency as set out in paragraph (b)(8) of this section or has not made an arrangement for payment by the payment due date;

(6) The right of the debtor to inspect and copy the records of the agency related to the claim. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which it intends to inspect and copy the records involved;

(7) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request for a review of the claim within the agency by the payment due date stated in the demand. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion should be paid by the date stated in the initial demand. The agency shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the agency either sustains or amends its determination, it shall notify the debtor of its intent to collect by administrative offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(8) The right of the debtor to offer to make a written agreement to repay the amount of the claim. The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the appropriate GSA Regional Finance Division will analyze the debtor's financial condition. Dependent upon the Regional Finance Division's evaluation of the financial strength of the debtor, the Comptroller or the appropriate designee and the debtor may agree to a written installment repayment schedule. The debtor shall execute a confess-judgment note which specifies all of

the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest, administrative charges, and penalty charges shall be provided for in the note. The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall recite that the statement was read and understood before execution of the notice and that the note is being signed knowingly and voluntarily. Some form of objective evidence of these facts should be maintained in the agency's file on the debtor.

(c) If no response to the demand is received by the date stated in the demand, GSA will take further action under this subpart or under the Federal Claims Collection Standards. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contract, debarment, offset of Federal salary, and other administrative offset, as authorized in 31 U.S.C. 3701–3719.

§ 105–55.005 Interest, administrative charges, and penalty charges.

(a) GSA shall assess interest on unpaid claims at the rate of the current value of funds to the Treasury as prescribed by the Secretary of the Treasury on the date interest begins to run. GSA shall assess administrative charges to cover the costs of processing and handling overdue claims. GSA shall assess penalty charges of six percent a year on any part of a debt more than 90 days past due. The imposition of interest, administrative charges, and penalty charges are made in accordance with 31 U.S.C. 3717.

(b) Interest will be computed from the date of *mailing* or *hand delivery* of the initial demand if the amount of the claim is not paid within 30 days. The 30-day period may be extended in individual cases if there is good cause to do so and it is in the public interest. Interest will only be computed on the principal of the claim and the interest rate will remain fixed for the duration of the indebtedness, except where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. A new rate which reflects the current value of funds to the Treasury at the time the new agreement is executed may be set if applicable and interest on interest and related charges may be charged where the debtor has defaulted on a previous repayment agreement. Charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under the new repayment schedule.

(c) GSA may waive interest, administrative charges, or penalty charges if it finds that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, administrative charges, or penalty charges will jeopardize collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including the situation where an offset or installment payment agreement is in effect.

§ 105–55.006 Responsibility for collection.

(a) Heads of Central Office Services and Staff Offices and Regional Administrators must initiate actions on claims arising from their program operations and immediately notify the appropriate Regional Finance Division. A claim will be recorded and controlled by the Regional Finance Division upon receipt of documentation from a competent authority establishing the amount due.

(b) The collection of claims under the control of Regional Finance Divisions will be aggressively pursued in accordance with the provisions of part 102 of the Federal Claims Collection Standards (4 CFR part 102). Whenever feasible, debts owed to the United States, together with interest, administrative charges and penalty charges, should be collected in full in one lump sum. If the debtor requests installment payments, the Regional Finance Divisions shall be responsible for determining the financial hardship of debtors and when appropriate shall arrange installment payment schedules. Claims which cannot be collected either directly or by administrative offset shall either be

written off as administratively uncollectible in accordance with authority delegated to the Director, Office of Finance and the Directors, Regional Finance Divisions, or referred to the appropriate Assistant General Counsel or Regional Counsel for further consideration.

(c) The General Counsel, delegated officials in the Office of General Counsel, and each Regional Counsel may compromise or suspend or terminate the collection of, referred claims under $20,000, exclusive of interest, penalties and administrative charges under the Act and the Federal Claims Collection Standards 4 CFR parts 103 and 104.

(d) The Office of General Counsel officials listed in paragraph (c) of this section have the responsibility for referring to the Department of Justice all claims over $20,000 exclusive of interest, penalties and administrative charges which cannot be compromised, suspended or terminated in accordance with the Federal Claims Collection Act and the Federal Claims Collections Standards. Referrals to the Department of Justice shall be made in accordance with 4 CFR part 105 of the Federal Claims Collections Standards.

§ 105–55.007 Collection by offset.

(a) Whenever feasible, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment. The Comptroller or his appropriate regional designee will collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716, except offset of Federal salaries and claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et. seq.

(b) Salary offsets and offsets against military retired pay are governed by 5 U.S.C. 5514.

(c) Collection by administrative offset of amounts payable from Civil Service Retirement and Disability Fund will be made pursuant to 5 U.S.C. 5514 and 5 U.S.C. 5705 and regulations thereunder.

(d) The offset of claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et. seq. will be made pursuant to the Government common law right of offset.

(e) GSA will promptly make requests for offset to other agencies holding funds payable to a debtor and provide instructions for the transfer of these funds. Requests for offset received from other agencies shall be processed promptly and the funds transferred to the requesting agency.

(f) If administrative offset cannot be effected through GSA or other known agency accounts receivable, then GSA will place a complete stop order against amounts otherwise payable to the debtor by placing the name of that debtor on the Department of the Army ''List of Contractors Indebted to the United States.'' If any amounts are discovered under this procedure, they will be offset against the debt owed to GSA.

(g) GSA should not attempt to effect collection by administrative offset when:

(1) The debtor has ceased to do business and there are no known or potential obligations payable by any agency of the United States Government to the debtor.

(2) The debt in question is over ten years old.

(3) The debtor has either gone into receivership and has liquidated all of its assets or has filed a petition in bankruptcy as a no asset debtor, and there is no likelihood of the debtor resuming operations; and there are no known or potential obligations payable by any agency of the United States Government to the debtor. In the case of a bankruptcy petition, the automatic stay against setoff must be honored pending release from the stay.

(4) The debtor is deceased, and there are no attachable assets in the estate.

(5) Any other circumstances which would indicate that the likelihood of collection by administrative offset is less than probable.

[50 FR 37531, Sept. 16, 1985, as amended at 52 FR 46468, Dec. 8, 1987]

§ 105–55.008 Settlement of claims.

(a) In accordance with the provisions of 4 CFR part 103, GSA officials listed in § 105–55.006(c) may settle claims not exceeding $20,000 exclusive of interest, penalties and administrative charges

by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) The Government would be unable to enforce complete collection by any means within a reasonable time;

(3) The amount of the claim does not justify the actual foreseable collection cost of the claim; or

(4) A combination of the above reasons.

(b) GSA may suspend or terminate collection action in accordance with the terms and procedures contained in 4 CFR part 104.

§ 105–55.009 Referral for litigation.

Claims which cannot be settled under § 105–55.008 or for which collection action cannot be suspended or terminated under 4 CFR parts 103 and 104, will be referred to the General Accounting Office or the Department of Justice, whichever is appropriate, in accordance with the procedures in 4 CFR part 105.

§ 105–55.010 Disclosure to credit reporting agencies and referrals to collection agencies.

The Comptroller and his designees may disclose debtor information to credit reporting agencies and may refer delinquent debts to debt collection agencies under the Federal Claims Collection Act, as amended, and other applicable authorities, provided, however, that no claim arising from the dishonor of any check or other negotiable instrument shall be disclosed to a credit reporting agency or referred to a collection agency without the concurrence of the appropriate Regional Inspector General for Investigations. Information will be disclosed to reporting agencies and referred to debt collection agencies in accordance with the terms and conditions of agreements entered into between GSA and the reporting and collection agencies. The terms and conditions of such agreements shall specify that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled.

§ 105–55.011 Credit report.

In order to aid the agency in making appropriate determinations as to the collection and compromise of claims; the collection of interest, administrative charges, and penalty charges; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Comptroller or his designees may institute a credit investigation of the debtor immediately following receipt of knowledge of the claim.

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF GENERAL SERVICES ADMINISTRATION EMPLOYEES TO THE UNITED STATES

Sec.

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AUTHORITY: 5 U.S.C. 5514; Pub. L. 97–365, 96 Stat. 1754.

SOURCE: 53 FR 31864, Aug. 22, 1988, unless otherwise noted.

§ 105–56.001 Scope.

(a) This part covers both internal and Government-wide collections under 5 U.S.C. 5514. It applies when certain debts to the U.S. are recovered by administrative offset from the disposable pay of an employee of the U.S. Government, except in situations where the employee consents to the recovery.

(b) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to the Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) or in accordance with any other statutory authority for the collection of claims of the U.S. or any Federal agency.

§ 105–56.002 Excluded debts or claims.

This part does not apply to:

(a) Debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (41 U.S.C. 301 *et seq.*), or the tariff laws of the United States.

(b) To any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute, such as travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108. Debt collection procedures under other statutory authorities, however, must be consistent with the provisions of FCCS, defined below..

(c) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

§ 105–56.003 Definitions.

The following definitions apply to this part:

''Administrator'' means the Administrator of the General Services or the Administrator's designee.

''Debt'' means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures and all other similar sources.

''Disposable pay'' means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld.

''Employee'' means a current employee of the General Services Administration, or other executive agency.

''FCCS'' means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

''Pay'' means basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an individual not entitled to basic pay, other authorized pay.

''Program official'' means a supervisor or management official of the employee's service or staff office.

''Salary offset'' means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

''Waiver'' means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 105–56.004 Pre-offset notice.

The employee is entitled to written notice from an appropriate program officer in his or her employing activity at least 30 days in advance of initiating a deduction from disposable pay informing him or her of:

(a) The nature, origin and amount of the indebtedness determined by the General Services Administration or another agency to be due;

(b) The intention of the agency to initiate proceedings to collect the debt through deductions from the employee's current disposable pay;

(c) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(d) GSA's policy concerning how interest is charged and penalties and administrative cost assessed, including a statement that such assessments must be made unless excused under 31 U.S.C. 3717 and the FCCS, 4 CFR 101.1 *et seq.*;

(e) The employee's right to inspect and copy Government records relating to the debt if Government records of the debt are not attached, or if the employee or his or her representative cannot personally inspect the records, the right to receive a copy of such records. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to GSA of the date on which he or she intends to inspect and copy the records involved;

(f) A demand for repayment providing for an opportunity, under terms agreeable to GSA, for the employee to establish a schedule for the voluntary repayment of the debt by offset or to enter into written repayment agreement of the debt in lieu of offset;

(g) The employee's right to request a waiver from the General Accounting Office if a waiver of repayment is authorized by law;

(h) The employee's right to pre-offset hearing conducted by a hearing official arranged by the appropriate program official of his or her employing activity if a petition is filed as prescribed by § 105–56.005. Such hearing official will be either an administrative law judge or a hearing official not under the control of the head of the agency and will be designated in accordance with the procedures established in 5 CFR 550.1107;

(i) The method and time period for petitioning for a hearing, including a statement that the timely filing of a petition for hearing will stay the commencement of collection proceedings;

(j) The issuance of a final decision on the hearing, if requested, at the earliest practicable date, but no later than 60 days after the petition is filed unless a delay is requested and granted;

(k) The risk that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority.

(l) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made.

(m) The employee's right to a prompt refund if amounts paid or deducted are later waived or found not owed, unless otherwise provided by law;

(n) The specific address to which all correspondence shall be directed regarding the debt.

§ 105–56.005 Employee response.

(a) *Voluntary repayment agreement*. An employee may submit a request to the official who signed the demand letter to enter into a written repayment agreement of the debt in lieu of offset. The request must be made within 7 days of receipt of notice under § 105–56.004. The agreement must be in writing, signed by both the employee and the program official making the demand and a signed copy must be sent to the regional finance division serving the program activity. Acceptance of such an agreement is discretionary with the agency. An employee who enters into such an agreement may nevertheless seek a waiver under paragraph (b) of this section.

(b) *Waiver*. Where a waiver of repayment is authorized by law, the employee may request a waiver from the General Accounting Office.

(c) *Reconsideration*. (1) An employee may seek a reconsideration of the Agency's determination regarding the existence or amount of the debt. The request must be submitted to the official who signed the demand letter within 7 days of receipt of notice under § 105–56.004. Within 20 days of receipt of this notice, the employee shall submit a detailed statement of reasons for reconsideration which must be accompanied by supporting documentation.

(2) An employee may request a reconsideration of the proposed offset schedule. The request must be submitted to the program official who signed the demand letter within 7 days of receipt of notice under § 105–56.004. Within 20 days of receipt of this notice, the employee shall submit an alternative repayment schedule accompanied by a detailed statement supported by documentation evidencing financial hardship resulting from the agency's proposed schedule. Acceptance of the request is discretionary with the agency. The agency must notify the employee in writing of its decision concerning the request to reduce the rate of an involuntary deduction.

§ 105–56.006 Petition for pre-offset hearing.

(a) The employee may petition for a pre-offset hearing by filing a written petition with the program official who

signed the demand letter within 15 days of receipt of the written notice. The petition must state why the employee believes the agency's determination concerning the existence or amount of the debt is in error, and set forth objections to the involuntary repayment schedule. The timely filing of a petition will suspend the commencement of collection proceedings.

(b) The employee's petition or statement must be signed by the employee.

(c) Petitions for hearing made after the expiration of the 15 day period may be accepted if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit.

(d) If the employee timely requests a pre-offset hearing or the timeliness is waived, the program official must:

(1) Notify the employee whether the employee may elect an oral hearing or whether he or she may have only a ''paper hearing,'' i.e., a review on the written record (see 4 CFR 102.3(c)). In either case, the program official will arrange for a hearing official; and

(2) The program official will provide the hearing official with a copy of all records on which the determination of the debt and any involuntary repayment schedule are based.

(e) An employee who elects an oral hearing must notify the hearing official and the program official in writing within 5 days of receipt of the notice under paragraph (d)(1) of this section and within 20 days of receipt of the notice under (d)(1) the employee shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses which the employee believes support his or her position.

(f) The hearing official shall notify the program official and the employee of the date, time and location of the hearing.

(g) If the employee later elects to have the hearing based only on the written submissions, notification must be given to the hearing official and the program official at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause.

(h) Failure of the employee to appear at the oral hearing can result in dismissal of the petition and affirmation of the agency's decision.

§ 105–56.007 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The agency, represented by a program official or a representative of the Office of General Counsel, and the employee, or his or her representative, shall explain their case in the form of an oral presentation with reference to the documentation submitted. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify where the hearing official determines the testimony to be relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person who creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing when doing so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call at the request of the employee or at the discretion of the hearing official.

§ 105–56.008 Pre-offset "paper hearing."

If a hearing is to be held only upon written submissions, the hearing official shall issue a decision based upon the record and responses submitted by both the agency and the employee.

§ 105–56.009 Written decision.

Within 60 days of filing of the employee's petition for a pre-offset hearing, the hearing official will issue a written decision setting forth: The facts supporting the nature and origin of the debt; the hearing official's analysis, findings and conclusions as to the employee's or agency's grounds, the amount and validity of the debt and the repayment schedule.

§ 105–56.010 Deductions.

(a) *When deductions may begin.* If the employee filed a petition for hearing with the program official before the expiration of the period provided for in § 105–56.006, then deductions will begin after the hearing official has provided the employee with a hearing, and the final written decision is in favor of the agency. It is the responsibility of the employee's program official to issue the pre-offset notice to the employee and to instruct the National Payroll Center to begin offset in accordance with the final written decision.

(b) *Retired or separated employees.* If the employee retires, resigns, or is terminated before collection of the amount of the indebtedness is completed, the remaining indebtedness will be offset from any subsequent payments of any nature. If the debt cannot be satisfied from subsequent payments, then the debt must be collected according to the procedures for administrative offset pursuant to 31 U.S.C. 3716.

(c) *Types of collection.* A debt may be collected in one lump sum or in installments. Collection will be by lump-sum unless the employee is able to demonstrate to the program official who signed the demand letter that he or she is financially unable to pay in one lump-sum. In these cases, collection will be by installment deductions.

(d) *Methods of collection.* If the debt cannot be collected in one lump sum, the debt will be collected by deductions at officially established pay intervals from an employee's current pay account, unless the employee and the program official agree to an alternative repayment schedule. The alternative arrangement must be in writing and signed by both the employee and the program official.

(1) *Installment deductions.* Installment deductions will be made over the shortest period possible. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. The installment payment will be sufficient in size and frequency to pay the debt over the shortest period possible and never to exceed three years. Installment payments of less than $100 per pay period will be accepted only in the most unusual circumstances.

(2) *Sources of deductions.* GSA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

(e) Interest, penalties and administrative costs on debts under this part will be assessed according to the provisions of 4 CFR 102.13.

§ 105–56.011 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 105–56.012 Refunds.

GSA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 105–56.013 Coordinating offset with another Federal agency.

(a) *When GSA is owed the debt.* When GSA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until GSA provides the agency with a written certification that the debtor owes GSA a debt and that GSA has complied with these regulations. This certification shall include the amount and basis of the debt and the due date of the payment.

(b) *When another agency is owed the debt.* GSA may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Any such request must be

accompanied by a certification from the requesting agency that the person owes the debt, the amount of the debt and that the employee has been given the procedural rights required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

Sec.
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105–57.002 Applicability and scope.
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105–57.004 Reasonable attempt to notify.
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105–57.006 Consideration of evidence.
105–57.007 Change in conditions after submission to IRS.

AUTHORITY: 31 U.S.C. 3720A.

SOURCE: 59 FR 1277, Jan. 10, 1994, unless otherwise noted.

§ 105–57.001 Purpose.

This part establishes procedures for the General Services Administration (GSA) to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to GSA.

§ 105–57.002 Applicability and scope.

(a) This part implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Has been delinquent for at least three months but, except in the case of a judgment debt, has not been delinquent more than ten years at the time the offset is made;

(2) With respect to which, GSA has given the taxpayer at least 60 days, from the date of notification, to present evidence that all or part of the debt is not past due or legally enforceable, has considered such evidence, and has determined that the debt is past due and legally enforceable;

(3) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(4) Cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(5) Has been disclosed by GSA to a credit reporting agency, including a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) With respect to which, GSA has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any income tax refunds due the taxpayer;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to eligibility of a debt for tax refund offset, at 26 CFR 301.6402–6T, have been satisfied.

§ 105–57.003 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 105–57.004 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, GSA must have used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), within one year preceding the attempt to notify the debtor.

§ 105–57.005 Notice requirement before offset.

The notification provided by GSA to the debtor will inform the debtor how to go about presenting evidence to GSA that all or part of the debt is either not past due or is not legally enforceable.

§ 105–57.006 Consideration of evidence.

Evidence submitted by the debtor will be considered by officials or employees of GSA. Any determination that an amount of such debt is past due and legally enforceable will be made by such officials or employees. Evidence that the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

§ 105–57.007 Change in conditions after submission to IRS.

If the amount of a debt is reduced after submission by GSA and offset by IRS, GSA will refund to the debtor any excess amount and will promptly notify IRS of the refund. GSA will also promptly notify the IRS if, after submission of a debt to the IRS for offset, GSA:

(a) Determines that an error has been made with respect to the information submitted;

(b) Receives a payment or credits a payment to an account submitted; or

(c) Receives notification that the debtor has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

Sec.

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Subpart 105–60.5—Exemptions

105–60.501 Categories of records exempt from disclosure under the FOIA.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

105–60.601 Purpose and scope of subpart.
105–60.602 Definitions.
105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.
105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.
105–60.605 Procedure in the event of a demand for production or disclosure.
105–60.606 Procedure where response to demand is required prior to receiving instructions.
105–60.607 Procedure in the event of an adverse ruling.
105–60.608 Fees, expenses, and costs.

AUTHORITY: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

SOURCE: 63 FR 56839, Oct. 23, 1998, unless otherwise noted.

§ 105–60.000 Scope of part.

(a) This part sets forth policies and procedures of the General Services Administration (GSA) regarding public access to records documenting:

(1) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability;

(2) Agency final opinions and orders, including policy statements and staff manuals;

(3) Operational and other appropriate agency records; and

(4) Agency proceedings.

(b) This part also covers exemptions from disclosure of these records; procedures for the public to inspect or obtain copies of GSA records; and instructions to current and former GSA employees on the response to a subpoena or other legal demand for material or information received or generated in the performance of official duty or because of the person's official status.

(c) Any policies and procedures in any GSA internal or external directive inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

Subpart 105–60.1—General Provisions

§ 105–60.101 Purpose.

This part 105–60 implements the provisions of the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552. The regulations in this part also implement Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, of June 23, 1987 (3 CFR, 1987 Comp., p. 235). This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA, including administrative procedures which must be exhausted before a requester invokes the jurisdiction of an appropriate United States District Court for GSA's failure to respond to a proper request within the statutory time limits, for a denial of agency records or challenge to the adequacy of a search, or for a denial of a fee waiver.

§ 105–60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA that come within the scope of 5 U.S.C. 552.

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

The policies of GSA with regard to the availability of records to the public are:

(a) GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will disclose information in any existing GSA record, with noted exceptions, regardless of the form or format of the record. GSA will provide the record in the form or format requested if the record is reproducible by the agency in that form or format without significant expenditure of resources. GSA will make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(b) The person making the request does not need to demonstrate an interest in the records or justify the request.

(c) The FOIA does not give the public the right to demand that GSA compile a record that does not already exist. For example, FOIA does not require GSA to collect and compile information from multiple sources to create a new record. GSA may compile records or perform minor reprogramming to extract records from a database or system when doing so will not significantly interfere with the operation of the automated system in question or involve a significant expenditure of resources.

(d) Similarly, FOIA does not require GSA to reconstruct records that have been destroyed in compliance with disposition schedules approved by the Archivist of the United States. However, GSA will not destroy records after a member of the public has requested access to them and will process the request even if destruction would otherwise be authorized.

(e) If the record requested is not complete at the time of the request, GSA may, at its discretion, inform the requester that the complete record will be provided when it is available, with no additional request required, if the record is not exempt from disclosure.

(f) Requests must be addressed to the office identified in § 105–60.402–1.

(g) Fees for locating and duplicating records are listed in § 105–60,305–10.

§ 105–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA outlined in subpart 105–60.5 of this part. Except when a record is classified or when disclosure would violate any Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. GSA will not withhold a record unless there is a compelling reason to do so; i.e., disclosure will likely cause harm to a Governmental or private interest. In the absence of a compelling reason, GSA will disclose a record even if it otherwise is subject to exemption. GSA will cite the compelling reason(s) to requesters when any record is denied under FOIA.

§ 105–60.104 Records of other agencies.

If GSA receives a request for access to records that are known to be the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. For example, GSA will refer requests to the appropriate agency in cases in which GSA does not have sufficient knowledge of the action or matter that is the subject of the requested records to determine whether the records must be released or may be withheld under one of the exemptions listed in Subpart 105–60.5 of this part. If GSA does not have the requested records, the agency will attempt to determine whether the requested records exist at another agency and, if possible, will forward the request to that agency. GSA will inform the requester that GSA has forwarded the request to another agency.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

§ 105–60.201 Published information and rules.

In accordance with 5 U.S.C. 552(a)(1), GSA publishes in the FEDERAL REGISTER, for the guidance of the public, the following general information concerning GSA:

(a) Description of the organization of the Central Office and regional offices and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure, descriptions of forms available or the places where forms may be obtained, and instructions on the scope and contents of all papers, reports, or examinations;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by GSA; and

(e) Each amendment, revision, or repeal of the materials described in this section.

§ 105–60.202 Published materials available for sale to the public.

(a) Substantive rules of general applicability adopted by GSA as authorized by law that this agency publishes in the FEDERAL REGISTER and which are available for sale to the public by the Superintendent of Documents at pre-established prices are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5), the Federal Acquisition Regulation (48 CFR Ch. 1), the Federal Property Management Regulations (41 CFR Ch. 101), and the Federal Travel Regulation (41 CFR Ch. 301–304).

(b) GSA provides technical information, including manuals and handbooks, to other Federal entities, e.g., the National Technical Information Service, with separate statutory authority to make information available to the public at pre-established fees.

(c) Requests for information available through the sources in paragraphs (a) and (b) of this section will be referred to those sources.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§ 105–60.301 General.

GSA makes available to the public the materials described under 5 U.S.C. 552(a)(2), which are listed in § 105–60.302 through an extensive electronic home page, http://www.gsa.gov/. A public handbook listing those materials as described in § 105–60.304 is available at GSA's Central Office in Washington, DC, and at the website at http://www.gsa.gov/staff/c/ca/pub1.htm. Members of the public who do not have the means to access this information electronically, and who are not located in the Washington, DC area, may contact the Freedom of Information Act office in any of the regional offices listed in this regulation. These offices will make arrangements for members of the public to access the information at a computer located at the FOIA office. Reasonable copying services are provided at the fees specified in § 105–60.305.

§ 105–60.302 Available materials.

GSA materials available under this subpart 105–60.3 are as follows:

(a) Final opinions, including concurring and dissenting opinions and orders, made in the adjudication of cases.

(b) Those statements and policy and interpretations that have been adopted by GSA and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff affecting a member of the public unless these materials are promptly published and copies offered for sale.

§ 105–60.303 Rules for public inspection and copying.

(a) *Locations.* Selected areas containing the materials available for public inspection and copying, described in this § 105–60.302, are located in the following places:

Central Office (GSA Headquarters),
General Services Administration, Washington, DC.
Telephone: 202–501–2262
FAX: 202–501–2727,
Email: gsa.foia@gsa.gov
1800 F Street, NW. (CAI), Washington, DC 20405

Office of the Inspector General
FOIA Officer, Office of Inspector General (J)
General Services Administration
1800 F Street NW., Room 5324
Washington, DC 20405

New England Region
General Services Administration (1AB)
(Comprised of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont)
Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222
Telephone: 617–565–8100
FAX: 617–565–8101

Northeast and Caribbean Region
(Comprised of the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands)
General Services Administration (2AR)
26 Federal Plaza, New York, NY 10278
Telephone: 212–264–1234
FAX: 212–264–2760

Mid-Atlantic Region
(Comprised of the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, excluding the Washington, DC metropolitan area)
General Services Administration (3ADS), 100 Penn Square East, Philadelphia, PA 19107
Telephone: 215–656–5530
FAX: 215–656–5590

Southeast Sunbelt Region
(Comprised of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee)
General Services Administration (4E), 401 West Peachtree Street, Atlanta, GA 30365
Telephone: 404–331–5103
FAX: 404–331–1813

Great Lakes Region
(Comprised of the States of Illinois, Indiana, Ohio, Minnesota, Michigan, and Wisconsin)
General Services Administration (5ADB), 230 South Dearborn Street, Chicago, IL 60604
Telephone: 312–353–5383
FAX: 312–353–5385

Heartland Region
(Comprised of the States of Iowa, Kansas, Missouri, and Nebraska)
General Services Administration (6ADB), 1500 East Bannister Road, Kansas City, MO 64131
Telephone: 816–926–7203
FAX: 816–823–1167

Greater Southwest Region
(Comprised of the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma)
General Services Administration (7ADQ), 819 Taylor Street, Fort Worth, TX 76102

Telephone: 817–978–3902
FAX: 817–978–4867
Rocky Mountain Region
(Comprised of the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming)
Business Service Center, General Services Administration (8PB–B), Building 41, Denver Federal Center, Denver, CO 80225
Telephone: 303–236–7408
FAX: 303–236–7403
Pacific Rim Region
(Comprised of the States of Hawaii, California, Nevada, Arizona, Guam, and Trust Territory of the Pacific)
Business Service Center, General Services Administration (9ADB), 525 Market Street, San Francisco, CA 941105
Telephone: 415–522–2715
FAX: 415–522–2705
Northwest/Arctic Region
(Comprised of the States of Alaska, Idaho, Oregon, and Washington)
General Services Administration (10L), GSA Center, 15th and C Streets, SW., Auburn, WA 98002
Telephone: 206–931–7007
FAX: 206–931–7195
National Capital Region
(Comprised of the District of Columbia and the surrounding metropolitan area)
General Services Administration (WPFA–L), 7th and D Streets SW., Washington, DC 20407
Telephone: 202–708–5854
FAX: 202–708–4655.

(b) *Time*. The offices listed above will be open to the public during the business hours of the GSA office where they are located.

(c) *Reproduction services and fees*. The GSA Central Office or the Regional Business Service Centers will furnish reasonable copying and reproduction services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Public information handbook and index.

GSA publishes a handbook for the public that identifies information regarding any matter described in § 105–60.302. This handbook also lists published information available from GSA and describes the procedures the public may use to obtain information using the Freedom of Information Act (FOIA). This handbook may be obtained without charge from any of the GSA FOIA offices listed in § 105–60.303(a), or at the GSA Internet Homepage(http://www.gsa.gov/staff/c/ca/cai/links.htm).

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of this part:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vii)) means any statute that specifically requires a Government agency to set the level of fees for particular types of records, as opposed to a statute that generally discusses such fees. Fees are required by statute to:

(1) Make Government information conveniently available to the public and to private sector organizations;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating Government information.

(b) The term *direct costs* means those expenditures which GSA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing and redacting) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the cost of operating duplicating machinery. Overhead expenses such as costs of space, and heating or lighting the facility where the records are stored are not included in direct costs.

(c) The term *search* includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Searches will be performed in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. Line-by-line searches will not be undertaken when it would be more efficient to duplicate the entire document. *Search* for responsive material is not the same as *review* of a record to

determine whether it is exempt from disclosure in whole or in part (see paragraph (e) of this section. Searches may be done manually or by computer using existing programming or new programming when this would not significantly interfere with the operation of the automated system in question.

(d) The term *duplication* means the process of making a copy of a document in response to a FOIA request. Copies can take the form of paper, microform audiovisual materials, or magnetic types or disks. To the extent practicable, GSA will provide a copy of the material in the form specified by the requester.

(e) The term *review* means the process of examining documents located in response to a request to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–6.

(f) The term *commercial-use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. GSA will determine whether a requester properly belongs in this category by determining how the requester will use the documents.

(g) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (f) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. ''Freelance'' journalists will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by it.

§ 105–60.305–2 Scope of this subpart.

This subpart sets forth policies and procedures to be followed in the assessment and collection of fees from a requester for the search, review, and reproduction of GSA records.

§ 105–60.305–3 GSA records available without charge.

GSA records available to the public are displayed in the Business Service Center for each GSA region. The address and phone number of the Business Service Centers are listed in § 105–60.303. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105–60.305–4 GSA records available at a fee.

(a) GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester at fees shown in § 105–60.305–10. Waivers of these fees are available under the conditions described in § 105–60.305–13. GSA will agree to:

(1) Show the originals to the requester;

(2) Make one copy available at a fee; or

(3) A combination of these alternatives.

(b) GSA will make copies of voluminous records as quickly as possible. GSA may, in its discretion, make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105–60.305–5 Searches.

(a) GSA may charge for the time spent in the following activities in determining ''search time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in trying to locate GSA records which come within the scope of the request;

(2) Time spent in either transporting a necessary agency searcher to a place of record storage, or in transporting records to the locations of a necessary agency searcher; and

(3) Direct costs of the use of computer time to locate and extract requested records.

(b) GSA will not charge for the time spent in monitoring a requester's inspection of disclosed agency records.

(c) GSA may assess fees for search time even if the search proves unsuccessful or if the records located are exempt from disclosure.

§ 105–60.305–6 Reviews.

(a) GSA will charge only commercial-use requesters for review time.

(b) GSA will charge for the time spent in the following activities in determining ''review time'' subject to applicable fees as provided in § 105–60.305–10:

(1) Time spent in examining a requested record to determine whether any or all of the record is exempt from disclosure, including time spent consulting with submitters of requested information; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(c) GSA will not charge for:

(1) Time spent in resolving issues of law or policy regarding the application of exemptions; or

(2) Review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. GSA will charge for such subsequent review.

§ 105–60.305–7 Assurance of payment.

If fees for search, review, and reproduction will exceed $25 but will be less than $250, the requester must provide written assurance of payment before GSA will process the request. If this assurance is not included in the initial request, GSA will notify the requester that assurance of payment is required before the request is processed. GSA will offer requesters an opportunity to modify the request to reduce the fee.

§ 105–60.305–8 Prepayment of fees.

(a) *Fees over $250.* GSA will require prepayment of fees for search, review, and reproduction which are likely to exceed $250. When the anticipated total fee exceeds $250, the requester will receive notice to prepay and at the same time will be given an opportunity to modify his or her request to reduce the fee. When fees will exceed $250, GSA will notify the requester that it will not start processing a request until payment is received.

(b) *Delinquent payments.* As noted in § 105–6.305–12(d), requesters who are delinquent in paying for previous requests will be required to repay the old debt and to prepay for any subsequent request. GSA will inform the requester that it will process no additional requests until all fees are paid.

§ 105–60.305–9 Form of payment.

Requesters should pay fees by check or money order made out to the General Services Administration and addressed to the official named by GSA in its correspondence. Payment may also be made by means of Mastercard or Visa. For information concerning payment by credit cards, call 816–926–7551.

§ 105–60.305–10 Fee schedule.

(a) When GSA is aware that documents responsive to a request are maintained for distribution by an agency operating a statutory fee based program, GSA will inform the requester of the procedures for obtaining records from those sources.

(b) GSA will consider only the following costs in fees charged to requesters of GSA records:

(1) Review and search fees.

Manual searches by clerical staff: $13 per hour or fraction of an hour.

Manual searches and reviews by professional staff in cases in which clerical staff would be unable to locate the requested records: $29 per hour or fraction of an hour.

Computer searches: Direct cost to GSA.

Transportation or special handling of records: Direct cost to GSA.

(2) Reproduction fees.

Pages no larger than 8½ by 14 inches, when reproduced by routine electrostatic copying: 10¢ per page.

Pages over 8½ by 14 inches: Direct cost of reproduction to GSA.

Pages requiring reduction, enlargement, or other special services: Direct cost of reproduction to GSA.

Reproduction by other than routine electrostatic copying: Direct cost of reproduction to GSA.

(c) Any fees not provided for under paragraph (b) of this section, shall be calculated as direct costs, in accordance with § 105–60.305–1(b).

(d) GSA will assess fees based on the category of the requester as defined in § 105–60.305–1(f)–(1); i.e., commercial-use, educational and noncommercial scientific institutions, news media, and all other. The fees listed in paragraph (b) of this section apply with the following exceptions:

(1) GSA will not charge the requester if the fee is $25 or less as the cost of collection is greater than the fee.

(2) Educational and noncommercial scientific institutions and the news media will be charged for the cost of reproduction alone. These requesters are entitled to the first 100 pages (paper copies) of duplication at no cost. The following are examples of how these fees are calculated:

(i) A request that results in 150 pages of material. No fee would be assessed for duplication of 150 pages. The reason is that these requesters are entitled to the first 100 pages at no charge. The charge for the remaining 50 pages would be $5.00. This amount would not be billed under the preceding section.

(ii) A request that results in 450 pages of material. The requester in this case would be charged $35.00. The reason is that the requester is entitled to the first 100 pages at no charge. The charge for the remaining 350 pages would be $35.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (page copies) of duplication at not cost and two hours of search without charge. The term *search time* generally refers to manual search. To apply this term to searches made by computer, GSA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) reaches the equivalent dollar amount of two hours of the salary of the person performing a manual search, i.e., the operator, GSA will begin assessing charges for computer search.

(4) GSA will charge commercial-use requesters fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial-use requesters are not entitled to two hours of free search time.

(e) Determining category of requester. GSA may ask any requester to provide additional information at any time to determine what fee category he or she falls under.

§ 105–60.305–11 Fees for authenticated and attested copies.

The fees set forth in § 105–60.305–10 apply to requests for authenticated and attested copies of GSA records.

§ 105–60.305–12 Administrative actions to improve assessment and collection of fees.

(a) *Charging interest.* GSA may charge requesters who fail to pay fees interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(b) *Effect of the Debt Collection Act of 1982.* GSA will take any action authorized by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Aggregating requests.* When GSA reasonably believes that a requester, or

group of requesters acting in concert, is attempting to break down a request into a series of requests related to the same subject for the purpose of evading the assessment of fees, GSA will combine any such requests and charge accordingly, including fees for previous requests where charges were not assessed. GSA will presume that multiple requests of this type within a 30-day period are made to avoid fees.

(d) *Advanced payments.* Whenever a requester is delinquent in paying the fee for a previous request (i.e., within 30 days of the date of the billing), GSA will require the requester to pay the full amount owed plus any applicable interest penalties and administrative costs as provided in paragraph (a) of this section or to demonstrate that he or she has, in fact, paid the fee. In such cases, GSA will also require advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When advance payment is required under this selection, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of appeals from initial denial plus permissible time extensions) will begin only after GSA has received the fee payments described in § 105–60.305–8.

§ 105–60.305–13 Waiver of fee.

(a) Any request for a waiver or the reduction of a fee should be included in the initial letter requesting access to GSA records under § 105–60.402–1. The waiver request should explain how disclosure of the information would contribute significantly to public's understanding of the operations or activities of the Government and would not be primarily in the commercial interest of the requester. In responding to a requester, GSA will consider the following factors:

(1) Whether the subject of the requested records concerns ''the operations or activities of the Government.'' The subject matter of the requested records must specifically concern identifiable operations or activities of the Federal Government. The connection between the records and the operations or activities must be direct and clear, not remote or attenuated.

(2) Whether the disclosure is ''likely to contribute'' to an understanding of Government operations or activities. In this connection, GSA will consider whether the requested information is already in the public domain. If it is, then disclosure of the information would not be likely to contribute to an understanding of Government operations or activities, as nothing new would be added to the public record.

(3) Whether disclosure of the requested information will contribute to ''public's understanding.'' The focus here must be on the contribution to public's understanding rather than personal benefit to be derived by the requester. For purposes of this analysis, the identity and qualifications of the requester should be considered to determine whether the requester is in a position to contribute to public's understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so: whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public's interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(b) GSA will ask the requester to furnish additional information if the initial request is insufficient to evaluate the merits of the request. GSA will not start processing a request until the fee waiver issue has been resolved unless the requester has provided written assurance of payment in full if the fee waiver is denied by the agency.

Subpart 105–60.4—Described Records

§ 105–60.401 General.

(a) Except for records made available in accordance with subparts 105–60.2 and 105–60.3 of this part, GSA will make records available to a requester promptly when the request reasonably describes the records unless GSA invokes an exemption in accordance with subpart 105–60.5 of this part. Although the burden of reasonable description of the records rests with the requester,

whenever practical GSA will assist requesters to describe records more specifically.

(b) Whenever a request does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 20-workday time limit set forth in § 105–60.402–2 will not start until the official identified in § 105–60.402–1 or other responding official receives a request reasonably describing the records.

§ 105–60.402 Procedures for making records available.

This subpart sets forth initial procedures for making records available when they are requested, including administrative procedures to be exhausted prior to seeking judicial review by an appropriate United States District Court.

§ 105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester must submit a request in writing to the GSA FOIA Officer, General Services Administration (CAI), Washington, DC 20405. Requesters may FAX requests to (202) 501–2727, or submit a request by electronic mail to gsa.foi@gsa.gov. For records located in the Office of Inspector General, the requester must submit a request to the FOIA Officer, Office of Inspector General, General Services Administration, 1800 F Street NW., Room 5324, Washington, DC 20405. For records located in the GSA regional offices, the requester must submit a request to the FOIA Officer for the relevant region, at the address listed in § 105–60.303(a). Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelope. The 20-workday time limit for agency decisions set forth in § 105–60.402–2 begins with receipt of a request in the office of the official identified in this section, unless the provisions under §§ 105–60.305–8 and 105–60.305–12(d) apply. Failure to include the words ''Freedom of Information Act Request'' or to submit a request to the official identified in this section will result in processing delays. A requester with questions concerning a FOIA request should contact the GSA FOIA Office, General Services Administration (CAI), 18th and F Streets, NW., Washington, DC 20405, (202) 501–2262.

§ 105–60.402–2 Response to initial requests.

(a) GSA will respond to an initial FOIA request that reasonably describes requested records, including a fee waiver request, within 20 workdays (that is, excluding Saturdays, Sundays, and legal holidays) after receipt of a request by the office of the appropriate official specified in § 105–60.402–1. This letter will provide the agency's decision with respect to disclosure or nondisclosure of the requested records, or, if appropriate, a decision on a request for a fee waiver. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter.

(b) In unusual circumstances, as described in § 105–60.404, GSA will inform the requester of the agency's need to take an extension of time, not to exceed an additional 10 workdays. This notice will afford requesters an opportunity to limit the scope of the request so that it may be processed within prescribed time limits or an opportunity to arrange an alternative time frame for processing the request or a modified request. Such mutually agreed time frames will supersede the 10 day limit for extensions.

(c) GSA will consider requests for expedited processing from requesters who submit a statement describing a compelling need and certifying that this need is true and correct to the best of such person's knowledge and belief. A *compelling need* means:

(1) Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in dissmeninating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. ''Urgently needed'' information has a particular

value that will be lost if not disseminated quickly, such as a breaking news story or general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the newsbreaking nature of the information.

(d) GSA will decide whether to grant expedited processing within five working days of receipt of the request. If the request is granted, GSA will process the request ahead of non-expedited requests, as soon as practicable. If the request is not granted, GSA will give expeditious consideration to administrative appeals of this denial.

(e) GSA may, at its discretion, establish three processing queues based on whether any requests have been granted expedited status and on the difficulty and complexity of preparing a response. Within each queue, responses will be prepared on a ''first in, first out'' basis. One queue will be made up of expedited requests; the second, of simple responses that clearly can be prepared without requesting an extension of time; the third, of responses that will require an extension of time.

§ 105–60.403 Appeal within GSA.

(a) A requester who receives a denial of a request, in whole or in part, a denial of a request for expedited processing or of a fee waiver request may appeal that decision within GSA. A requester may also appeal the adequacy of the search if GSA determines that it has searched for but has not requested records. The requester must send the appeal to the GSA FOIA Officer, General Services Administration (CAI), Washington, DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office. For denials which originate in the Office of Inspector General, the requester must send the appeal to the Inspector General, General Services Administration, 1800 F Street NW., Washington, DC 20405.

(b) The GSA FOIA Officer must receive an appeal no later than 120 calendar days after receipt by the requester of the initial denial of access or fee waiver.

(c) An appeal must be in writing and include a brief statement of the reasons he or she thinks GSA should release the records or provide expedited processing and enclose copies of the initial request and denial. The appeal letter must include the words ''Freedom of Information Act Appeal'' on both the face of the appeal letter and on the envelope. Failure to follow these procedures will delay processing of the appeal. GSA has 20 workdays after receipt of a proper appeal of denial of records to issue a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal. As noted in § 105–60.404, the GSA FOIA Officer may extend this time limit in unusual circumstances. GSA will process appeals of denials of expedited processing as soon as possible after receiving them.

(d) A requester who receives a denial of an appeal, or who has not received a response to an appeal or initial request within the statutory time frame may seek judicial review in the United States District Court in the district in which the requester resides or has a principal place of business, or where the records are situated, or in the United States District Court for the District of Columbia.

§ 105–60.404 Extension of time limits.

(a) In unusual circumstances, the GSA FOIA Officer or the regional FOIA Officer may extend the time limits prescribed in §§ 105–60.402 and 105–60.403. For purposes of this section, the term *unusual circumstances* means:

(1) The need to search for an collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are described in a single request;

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or

more components of GSA having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, GSA may take more than one extension of time. However, the total extension of time to respond to any single request shall not exceed 10 workdays. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide written notice to the requester of any extension of time limits.

§ 105–60.405 Processing requests for confidential commercial information.

(a) *General.* The following additional procedures apply when processing requests for confidential commercial information.

(b) *Definitions.* For the purposes of this section, the following definitions apply:

(1) *Confidential commercial information* means records provided to the Government by a submitter that contain material arguably exempt from release under 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means a person or entity which provides to the Government information which may constitute confidential commercial information. The term *submitter* includes, but is not limited to, individuals, partnerships, corporations, State governments, and foreign governments.

(c) *Designating confidential commercial information.* Since January 1, 1988, submitters have been required to designate confidential commercial information as such when it is submitted to GSA or at a reasonable time thereafter. For information submitted in connection with negotiated procurements, the requirements of Federal Acquisition Regulation 48 CFR 15.407(c)(8) and 52.215–12 also apply.

(d) *Procedural requirements—consultation with the submitter.*(1) If GSA receives a FOIA request for potentially confidential commercial information, it will notify the submitter immediately by telephone and invite an opinion whether disclosure will or will not cause substantial competitive harm.

(2) GSA will follow up the telephonic notice promptly in writing before releasing any records unless paragraph (f) of this section applies.

(3) If the submitter indicates an objection to disclosure GSA will give the submitter seven workdays from receipt of the letter to provide GSA with a detailed written explanation of how disclosure of any specified portion of the records would be competitively harmful.

(4) If the submitter verbally states that there is no objection to disclosure, GSA will confirm this fact in writing before disclosing any records.

(5) At the same time GSA notifies the submitter, it will also advise the requester that there will be a delay in responding to the request due to the need to consult with the submitter.

(6) GSA will review the reasons for nondisclosure before independently deciding whether the information must be released or should be withheld. If GSA decides to release the requested information, it will provide the submitter with a written statement explaining why his or her objections are not sustained. The letter to the submitter will contain a copy of the material to be disclosed or will offer the submitter an opportunity to review the material in none of GSA's offices. If GSA decides not to release the material, it will notify the submitter orally or in writing.

(7) If GSA determines to disclose information over a submitter's objections, it will inform the submitter the GSA will delay disclosure for 5 workdays from the estimated date the submitter receives GSA's decision before it releases the information. The decision letter to the requester shall state that GSA will delay disclosure of material it has determined to disclose to allow for the notification of the submitter.

(e) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, GSA will notify a submitter whenever it receives a FOIA request for such information:

(i) If the records are less than 10 years old and the information has been

designated by the submitter as confidential commercial information; or

(ii) If GSA has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(2) For confidential commercial information submitted on or after January 1, 1988, GSA will notify a submitter whenever it determines that the agency may be required to disclose records:

(i) That the submitter has previously designated as privileged or confidential; or

(ii) That GSA believes could reasonably be expected to cause substantial competitive harm if disclosed.

(3) GSA will provide notice to a submitter for a period of up to 10 years after the date of submission.

(f) *When notice is not required*. The notice requirements of this section will not apply if:

(1) GSA determines that the information should not be disclosed;

(2) The information has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law other than the FOIA;

(4) Disclosure is required by an agency rule that

(i) Was adopted pursuant to notice and public comment;

(ii) specifies narrow classes of records submitted to the agency that are to be released under FOIA; and

(iii) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted for a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(5) The information is not designated by the submitter as exempt from disclosure under paragraph (c) of this section, unless GSA has substantial reason to believe that disclosure of the information would be competitively harmful; or

(6) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such cases, the agency must provide the submitter with written notice of any final administrative decision five workdays prior to disclosing the information.

(g) *Lawsuits*. If a FOIA requester sues the agency to compel disclosure of confidential commercial information, GSA will notify the submitter as soon as possible. If the submitter sues GSA to enjoin disclosure of the records, GSA will notify the requester.

Subpart 105–60.5—Exemptions

§ 105–60.501 Categories of records exempt from disclosure under the FOIA.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) Specifically authorized under the criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute

(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

(i) could reasonably be expected to interfere with enforcement proceedings;

(ii) would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) GSA will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section. If GSA must delete information from a record before disclosing it, this information, and the reasons for withholding it, will be clearly described in the cover letter to the requester or in an attachment. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In the case of electronic deletion, the amount of redacted information shall be indicated at the place in the record where such deletion was made, unless including the indication would harm an interest protected by the exemption under which the exemption was made.

(c) GSA will invoke no exemption under this section to deny access to records that would be available pursuant to a request made under the Privacy Act of 1974 (5 U.S.C. 552a) and implementing regulations, 41 CFR part 105–64, or if disclosure would cause no demonstrable harm to any governmental or private interest.

(d) Pursuant to National Defense Authorization Act of Fiscal Year 1997, Pub. L. No. 104–201, section 821, 110 Stat. 2422, GSA will invoke Exemption 3 to deny access to any proposal submitted by a vendor in response to the requirements of a solicitation for a competitive proposal unless the proposal is set forth or incorporated by reference in a contract entered into between the agency and the contractor that submitted the proposal.

(e) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i) and the investigation or proceeding involves a possible violation of criminal law, and there is reason to believe that the subject of the investigation or proceeding is not aware of it, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(f) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(g) Whenever a request is made that involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the

records is classified information as provided in paragraph (a)(1) of this section, the Bureau may, as long as the existence of the records remains classified information, treat the records are not subject to the requirements of this section.

Subpart 105–60.6—Production or Disclosure by Present or Former General Services Administration Employees in Response to Subpoenas or Similar Demands in Judicial or Administrative Proceedings

§ 105—60.601 Purpose and scope of subpart.

(a) By virtue of the authority vested in the Administrator of General Services by 5 U.S.C. 301 and 40 U.S.C. 486(c) this subpart establishes instructions and procedures to be followed by current and former employees of the General Services Administration in response to subpoenas or similar demands issued in judicial or administrative proceedings for production or disclosure of material or information obtained as part of the performance of a person's official duties or because of the person's official status. Nothing in these instructions applies to responses to subpoenas or demands issued by the Congress or in Federal grand jury proceedings.

(b) This subpart provides instructions regarding the internal operations of GSA and the conduct of its employees, and is not intended and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against GSA.

§ 105—60.602 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Material* means any document, record, file or data, regardless of the physical form or the media by or through which it is maintained or recorded, which was generated or acquired by a current or former GSA employee by reason of the performance of that person's official duties or because of the person's official status, or any other tangible item, e.g., personal property possessed or controlled by GSA.

(b) *Information* means any knowledge or facts contained in material, and any knowledge or facts acquired by current or former GSA employee as part of the performance of that person's official duties or because of that person's official status.

(c) *Demand* means any subpoena, order, or similar demand for the production or disclosure of material, information or testimony regarding such material or information, issued by a court or other authority in a judicial or administrative proceeding, excluding congressional subpoenas or demands in Federal grand jury proceedings, and served upon a present or former GSA employee.

(d) *Appropriate Authority* means the following officials who are delegated authority to approve or deny responses to demands for material, information or testimony:

(1) The Counsel to the Inspector General for material and information which is the responsibility of the GSA Office of Inspector General or testimony of current or former employees of the Office of the Inspector General;

(2) The Counsel to the GSA Board of Contract Appeals for material and information which is the responsibility of the Board of Contract Appeals or testimony of current or former Board of Contract Appeals employees;

(3) The GSA General Counsel, Associate General Counsel(s) or Regional Counsel for all material, information, or testimony not covered by paragraphs (d)(1) and (2) of this section.

§ 105–60.603 Acceptance of service of a subpoena duces tecum or other legal demand on behalf of the General Services Administration.

(a) The Administrator of General Services and the following officials are the only GSA personnel authorized to accept service of a subpoena or other legal demand on behalf of GSA: The GSA General Counsel and Associate General Counsel(s) and, with respect to material or information which is the responsibility of a regional office, the Regional Administrator and Regional Counsel. The Inspector General and Counsel to the Inspector General, as

well as the Chairman and Vice Chairman of the Board of Contract Appeals, are authorized to accept service for material or information which are the responsibility of their respective organizations.

(b) A present or former GSA employee not authorized to accept service of a subpoena or other demand for material, information or testimony obtained in an official capacity shall respectfully inform the process server that he or she is not authorized to accept service on behalf of GSA and refer the process server to an appropriate official listed in paragraph (a) of this section.

(c) A Regional Administrator or Regional Counsel shall notify the General Counsel of a demand which may raise policy concerns or affect multiple regions.

§ 105–60.604 Production or disclosure prohibited unless approved by the Appropriate Authority.

No current or former GSA employee shall, in response to a demand, produce any material or disclose, through testimony or other means, any information covered by this subpart, without prior approval of the Appropriate Authority.

§ 105–60.605 Procedure in the event of a demand for production or disclosure.

(a) Whenever service of a demand is attempted in person or via mail upon a current or former GSA employee for the production of material or the disclosure of information covered by this subpart, the employee or former employee shall immediately notify the Appropriate Authority through his or her supervisor or his or her former service, staff office, or regional office. The supervisor shall notify the Appropriate Authority. For current or former employees of the Office of Inspector General located in regional offices, Counsel to the Inspector General shall be notified through the immediate supervisor or former employing field office.

(b) The Appropriate Authority shall require that the party seeking material or testimony provide the Appropriate Authority with an affidavit, declaration, statement, and/or a plan as described in paragraphs (c) (1), (2), and (3) of this section if not included with or described in the demand. The Appropriate Authority may waive this requirement for a demand arising out of proceedings to which GSA or the United States is a party. Any waiver will be coordinated with the United States Department of Justice (DOJ) in proceedings in which GSA, its current or former employees, or the United States are represented by DOJ.

(c)(1) Oral testimony. If oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking the testimony or the party's attorney to provide, by affidavit or other statement, a detailed summary of the testimony sought and its relevance to the proceedings. Any authorization for the testimony of a current or former GSA employee shall be limited to the scope of the demand as summarized in such statement or affidavit.

(2) Production of material. When information other than oral testimony is sought by a demand, the Appropriate Authority shall require the party seeking production or the party's attorney to provide a detailed summary, by affidavit or other statement, of the information sought and its relevance to the proceeding.

(3) The Appropriate Authority may require a plan or other information from the party seeking testimony or production of material of all demands reasonably foreseeable, including, but not limited to, names of all current and former GSA employees from whom testimony or production is or will likely be sought, areas of inquiry, for current employees the length of time away from duty anticipated, and identification of documents to be used in each deposition or other testimony, where appropriate.

(d) The Appropriate Authority will notify the current or former employee, the appropriate supervisor, and such other persons as circumstances may warrant, whether disclosure or production is authorized, and of any conditions or limitations to disclosure or production.

(e) Factors to be considered by the Appropriate Authority in responding to demands:

(1) Whether disclosure or production is appropriate under rules of procedure governing the proceeding out of which the demand arose;

(2) The relevance of the testimony or documents to the proceedings;

(3) The impact of the relevant substantive law concerning applicable privileges recognized by statute, common law, judicial interpretation or similar authority;

(4) The information provided by the issuer of the demand in response to requests by the Appropriate Authority pursuant to paragraphs (b) and (c) of this section;

(5) The steps taken by the issuer of the demand to minimize the burden of disclosure or production on GSA, including but not limited to willingness to accept authenticated copies of material in lieu of personal appearance by GSA employees;

(6) The impact on pending or potential litigation involving GSA or the United States as a party;

(7) In consultation with the head of the GSA organizational component affected, the burden on GSA which disclosure or production would entail; and

(8) Any additional factors unique to a particular demand or proceeding.

(f) The Appropriate Authority shall not approve a disclosure or production which would:

(1) Violate a statute or a specific regulation;

(2) Reveal classified information, unless appropriately declassified by the originating agency;

(3) Reveal a confidential source or informant, unless the investigative agency and the source or informant consent;

(4) Reveal records or information compiled for law enforcement purposes which would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would be impaired;

(5) Reveal trade secrets or commercial or financial information which is privileged or confidential without prior consultation with the person from whom it was obtained; or

(6) Be contrary to a recognized privilege.

(g) The Appropriate Authority's determination, including any reasons for denial or limitations on disclosure or production, shall be made as expeditiously as possible and shall be communicated in writing to the issuer of the demand and appropriate current or former GSA employee(s). In proceedings in which GSA, its current or former employees, or the United States are represented by DOJ, the determination shall be coordinated with DOJ which may respond to the issuer of the subpoenas or demand in lieu of the Appropriate Authority.

§ 105–60.606 Procedure where response to demand is required prior to receiving instructions.

(a) If a response to a demand is required before the Appropriate Authority's decision is issued, a GSA attorney designated by the Appropriate Authority for the purpose shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the judicial or other authority with a copy of the instructions contained in this subpart. The attorney shall inform the court or other authority that the demand has been or is being referred for the prompt consideration by the Appropriate Authority. The attorney shall respectfully request the judicial or administrative authority to stay the demand pending receipt of the requested instructions.

(b) The designated GSA attorney shall coordinate GSA's response with DOJ's Civil Division or the relevant Office of the United States Attorney and may request that a DOJ or Assistant United States Attorney appear with the employee in addition to or in lieu of a designated GSA attorney.

(c) If an immediate demand for production or disclosure is made in circumstances which preclude the appearance of a GSA or DOJ attorney on the behalf of the employee or the former employee, the employee or former employee shall respectfully make a request to the demanding authority for sufficient time to obtain advice of counsel.

§ 105–60.607 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand

in response to a request made in accordance with § 105–60.606 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions by the Appropriate Authority not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfully decline to comply, citing these instructions and the decision of the United States Supreme Court in United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951).

§ 105–60.608 Fees, expenses, and costs.

(a) In consultation with the Appropriate Authority, a current employee who appears as a witness pursuant to a demand shall ensure that he or she receives all fees and expenses, including travel expenses, to which witnesses are entitled pursuant to rules applicable to the judicial or administrative proceedings out of which the demand arose.

(b) Witness fees and reimbursement for expenses received by a GSA employee shall be disposed of in accordance with rules applicable to Federal employees in effect at the time.

(c) Reimbursement to the GSA for costs associated with producing material pursuant to a demand shall be determined in accordance with rules applicable to the proceedings out of which the demand arose.

PART 105–62—DOCUMENT SECURITY AND DECLASSIFICATION

Sec.
105–62.000 Scope of part.

Subpart 105.62.1—Classified Materials

105–62.101 Security classification categories.
105–62.102 Authority to originally classify.
105–62.103 Access to GSA-originated materials.

Subpart 105–62.2—Declassification and Downgrading

105–62.201 Declassification and downgrading.
105–62.202 Review of classified materials for declassification purposes.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and E.O. 12065 dated June 28, 1978.

SOURCE: 44 FR 64805, Nov. 8, 1979, unless otherwise noted.

§ 105–62.000 Scope of part.

This part prescribes procedures for safeguarding national security information and material within GSA. They explain how to identify, classify, downgrade, declassify, disseminate, and protect such information in the interests of national security. They also supplement and conform with Executive Order 12065 dated June 28, 1978, subject: National Security Information, and the Implementing Directive dated September 29, 1978, issued through the Information Security Oversight Office.

Subpart 105–62.1—Classified Materials

§ 105–62.101 Security classification categories.

As set forth in Executive Order 12065, official information or material which requires protection against unauthorized disclosure in the interests of the national defense or foreign relations of the United States (hereinafter collectively termed ''national security'') shall be classified in one of three categories: Namely, Top Secret, Secret, or Confidential, depending on its degree of significance to the national security. No other categories shall be used to identify official information or material as requiring protection in the interests of national security except as otherwise expressly provided by statute. The three classification categories are defined as follows:

(a) *Top Secret*. Top Secret refers to that national security information which requires the highest degree of protection, and shall be applied only to such information as the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies, disruption of foreign relations vitally affecting the national security, intelligence sources and methods, and the compromise of vital national defense plans or complex cryptologic and communications systems. This classification

shall be used with the utmost restraint.

(b) *Secret.* Secret refers to that national security information or material which requires a substantial degree of protection, and shall be applied only to such information as the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security, significant impairment of a program or policy directly related to the national security, and revelation of significant military plans or intelligence operations. This classification shall be used sparingly.

(c) *Confidential.* Confidential refers to other national security information which requires protection, and shall be applied only to such information as the unauthorized disclosure of which could reasonably be expected to cause identifiable damage to the national security.

§ 105–62.102 Authority to originally classify.

(a) *Top secret, secret, and confidential.* The authority to originally classify information as Top Secret, Secret, or Confidential may be exercised only by the Administrator and is delegable only to the Director, Information Security Oversight Office.

(b) *Limitations on delegation of classification authority.* Delegations of original classification authority are limited to the minimum number absolutely required for efficient administration. Delegated original classification authority may not be redelegated.

[47 FR 5416, Feb. 5, 1982]

§ 105–62.103 Access to GSA-originated materials.

Classified information shall not be disseminated outside the executive branch of the Government without the express permission of the GSA Security Officer except as otherwise provided in this § 105–62.103.

(a) *Access by historical researchers.* Persons outside the executive branch who are engaged in historical research projects, may be authorized access to classified information or material, provided that:

(1) A written determination is made by the Administrator of General Services that such access is clearly consistent with the interests of national security.

(2) Access is limited to that information over which GSA has classification jurisdiction.

(3) The material requested is reasonably accessible and can be located with a reasonable amount of effort.

(4) The person agrees to safeguard the information and to authorize a review of his or her notes and manuscript for determination that no classified information is contained therein by signing a statement entitled ''Conditions Governing Access to Official Records for Historical Research Purposes.''

(5) An authorization for access shall be valid for a period of 2 years from the date of issuance and may be renewed under the provisions of this § 105–62.103(a).

(b) *Access by former Presidential appointees.* Persons who previously occupied policymaking positions to which they were appointed by the President may not remove classified information or material upon departure from office as all such material must remain under the security control of the U.S. Government. Such persons may be authorized access to classified information or material which they originated, received, reviewed, signed, or which was addressed to them while in public office, provided that the GSA element having classification jurisdiction for such information or material makes a written determination that access is consistent with the interests of national security, approval is granted by the GSA Security Officer, and the individual seeking access agrees:

(1) To safeguard the information,

(2) To authorize a review of his or her notes for determination that no classified information is contained therein, and

(3) To ensure that no classified information will be further disseminated or published.

(c) *Access during judicial proceedings.* Classified information will not normally be released in the course of any civilian judicial proceeding. In special circumstances however, and upon the receipt of an order or subpoena issued

by a Federal court, the Administrator may authorize the limited release of classified information if he or she determines that the interests of justice cannot otherwise be served. Appropriate safeguards will be established to protect such classified material released for use in judicial proceedings.

(d) *Access to material in NARS custody.* The Archivist of the United States prepares procedures governing access to materials transferred to NARS custody. These procedures are issued by the Administrator of General Services in 41 CFR part 105–61.

(e) *Access by the General Accounting Office and congressional committees.* Classified information may be released to the General Accounting Office (GAO) and congressional committees when specifically authorized by the GSA Security Officer except as otherwise provided by law.

Subpart 105–62.2—Declassification and Downgrading

§ 105–62.201 Declassification and downgrading.

(a) *Authority to downgrade and declassify.* The authority to downgrade and declassify national security information or material shall be exercised as follows:

(1) Information or material may be downgraded or declassified by the GSA official authorizing the original classification, by a successor in capacity, by a supervisory official of either, or by the Information Security Oversight Committee on appeal.

(2) Downgrading and declassification authority may also be exercised by an official specifically authorized by the Administrator.

(3) In the case of classified information or material officially transferred to GSA by or under statute or Executive order in conjunction with a transfer of functions and not merely for storage purposes, GSA shall be deemed the originating agency for all purposes under these procedures including downgrading and declassification.

(4) In the case of classified information or material held in GSA not officially transferred under paragraph (a)(3) of this section but originated in an agency which has since ceased to exist, GSA is deemed the originating agency. Such information or material may be downgraded and declassified 30 calendar days after consulting with any other agencies having an interest in the subject matter.

(5) Classified information or material under the final declassification jurisdiction of GSA which has been transferred to NARS for accession into the Archives of the United States may be downgraded and declassified by the Archivist of the United States in accordance with Executive Order 12065, directives of the Information Security Oversight Office, and the systematic review guidelines issued by the Administrator of General Services.

(6) It is presumed that information which continues to meet classification requirements requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise they shall be referred to the Administrator, the Director of the Information Security Oversight Office, or in accordance with the procedures for mandatory review described in § 105–62.202(b).

(b) *Declassification.* Declassification of information shall be given emphasis comparable to that acccorded classification. Information classified under Executive Order 12065 and prior orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event which permits declassification. When information is reviewed for declassification it shall be declassified unless the declassification authority established in § 105–62.202 determines that the information continues to meet the classification requirements prescribed despite the passage of time.

(c) *Downgrading.* Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders. Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an

official authorized to declassify the same information. Notice of downgrading shall be provided to known holders of the information.

§ 105–62.202 Review of classified materials for declassification purposes.

(a) *Systematic review for declassification.* Except for foreign government information, classified information constituting permanently valuable records of GSA as defined by 44 U.S.C. 2103, and information in the possession and under control of NARA, under 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes 20 years old. Transition to systematic review at 20 years shall be implemented as rapidly as practicable and shall be completed by December 1, 1988. Foreign government information shall be reviewed for declassification as it becomes 30 years old.

(b) *Mandatory review for declassification.* All classified information upon request by a member of the public or a Government employee or agency to declassify and release such information under the provisions of Executive Order 12065 shall be reviewed by the responsible GSA element for possible declassification in accordance with the procedures set forth in paragraphs (c) through (g) of this section.

(c) *Submission of requests for review.* Requests for mandatory review of classified information shall be submitted in accordance with the following:

(1) Requests originating within GSA shall in all cases be submitted directly to the service or staff office that originated the information.

(2) For expeditious action, requests from other governmental agencies or from members of the public should be submitted directly to the service or staff office that originated the material, or, if the originating element is not known, or no longer exists, the requester shall submit the request to the GSA Security Officer who shall cause such request to be reviewed.

(d) *Requirements for processing.* Requests for declassification review and release of information shall be processed in accordance with the provisions set forth in paragraphs (e) through (h) of this section subject to the following conditions:

(1) The request is in writing and reasonably describes the information sought with sufficient particularity to enable the element to identify it.

(2) The requester shall be asked to correct a request that does not comply with paragraph (d)(1) of this section, to provide additional information.

(3) If within 30 days the requester does not correct the request, describe the information sought with sufficient particularity or narrow the scope of the request, the element that received the request shall notify the requester and state the reason why no action will be taken on the request.

(e) *Processing of requests.* Requests that meet the foregoing requirements for processing will be acted upon as follows:

(1) GSA action upon the initial request shall be completed within 60 days.

(2) Receipt of the request shall be acknowledged within 7 days.

(3) The designated service or staff office shall determine if the requested information may be declassified and shall make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to the Deputy Administrator (the notice shall include the Deputy Administrator's name, title, and address), and a notice that such an appeal must be filed with the Deputy Administrator within 60 days in order to be considered.

(f) *Foreign government information.* Except as provided hereinafter, requests for mandatory review for the declassification of classified documents that contain foreign government information shall be processed and acted upon in accordance with the provisions of paragraphs (c) through (e) of this section. If the request involves information that was initially received or classified by GSA, then the corresponding service or staff office shall be designated by the GSA Security Officer to determine whether the foreign government information in the document

may be declassified and released in accordance with GSA policy or guidelines, after consulting with other agencies that have subject matter interest as necessary. If GSA is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency. In those cases where agency policy or guidelines do not apply, consultation with the foreign originator, through the GSA Security Officer, may be made prior to final action on the request.

(g) *Information classified outside the service or staff office.* When a service or staff office receives a request for declassification of information in a document which is in the custody of the service or staff office but was classified by another service or staff office or by another Government agency, the service or staff office shall refer the request to the classifying service or staff office or Government agency, together with a copy of the document containing the information requested when practicable, and shall notify the requester of the referral, unless the agency that classified the information objects on the grounds that its association with the information requires protection. When a GSA service or staff office receives such a referral, it shall process the request in accordance with the requirements of this paragraph and, if so requested, shall notify the referring service, staff office, or agency of the determination made on the request.

(h) *Action on appeal.* The following procedures shall be followed when denials of requests for declassification are appealed:

(1) The Deputy Administrator shall, within 15 days of the date of the appeal, convene a meeting of the GSA Information Security Oversight Committee (ISOC) that shall include the GSA Security Officer, or his or her representative, and the GSA official who denied the original request (and, at the option of that official, any subordinates or personnel from other agencies that participated in the decision for denial).

(2) The ISOC shall learn from the official the reasons for denying the request, concentrating in particular upon which requirement continued classification is based and the identifiable damage that would result if the information were declassified. The ISOC shall also learn from the official the part or parts of the information that is classified and if by deleting minor segments of the information it might not then be declassified.

(3) The ISOC's decision to uphold or deny the appeal, in whole or in part, shall be based upon the unanimous opinion of its membership. In the event that unanimity cannot be attained, the matter shall be referred to the Administrator, whose decision shall be final.

(4) Based upon the outcome of the appeal, a reply shall be made to the person making the appeal that either encloses the requested information or part of the information, or explains why the continued classification of the information is required. A copy of the reply shall be sent to the GSA official who originally denied the request for declassification, to the GSA Security Officer, and to any other agency expressing an interest in the decision.

(5) Final action on appeals shall be completed within 30 days of the date of the appeal.

(i) *Prohibition.* No service of staff office in possession of a classified document may refuse to confirm the existence of the document in response to a request for the document under the provisions for mandatory review, unless the fact of its existence would itself be classifiable.

(j) *Presidential papers.* Information less than 10 years old which was originated by the President, by the White House staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, is exempted from mandatory review for declassification. Such information 10 years old or older is subject to mandatory review for declassification in accordance with procedures developed by the Archivist of the United States which provide for consultation with GSA on matters of primary subject interest to this agency.

PART 105–64—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

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AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); 88 Stat. 1897 (5 U.S.C. 552a).

SOURCE: 50 FR 43139, Oct. 24, 1985, unless otherwise noted.

§ 105–64.000 Scope of part.

The policies and procedures for collecting, using, and disseminating records maintained by GSA are subject to 5 U.S.C. 552a, and defined in § 105–64.002. Policies and procedures governing availability of records in general are in parts 105–60 and 61 of this chapter. This part also covers exemptions from disclosing personal information; procedures guiding persons who wish to obtain information, or to inspect or correct the content of records; accounting for disclosure of information; requirements for medical records; and fees.

§ 105–64.001 Purpose.

This part implements 5 U.S.C. 552a (Pub. L. 93–579), known as the Privacy Act of 1974 (referred to as the Act). This part states procedures for notifying an individual of a GSA system of records containing a record pertaining to him or her, procedures for gaining access to or contesting the content of records, and other procedures for carrying out the Act.

§ 105–64.002 Definitions.

For the purpose of this part 105–64, the terms listed below are defined as follows:

(a) *Agency* means agency as defined in 5 U.S.C. 552(e);

(b) *Individual* means a citizen of the United States or a legal alien admitted for permanent residence;

(c) *Maintain* means keep, collect, use, and disseminate;

(d) *A record* means any item, collection, or grouping of information an agency maintains about a person, including, but not limited to, his or her educational background, financial transactions, medical history, and employment or criminal history, and that contains his or her name or other identifying number of symbols such as a fingerprint, voiceprint, or photograph;

(e) *A system of records* means any group of records under the control of the agency from which information is retrieved by a person's name or by an identifying number, symbols, or other identifiers assigned to that individual;

(f) *A statistical record* means an item of information maintained for statistical research or reporting purposes that is not used in making any determination about an identifiable person, except as provided by Section 8 of Title 13 U.S.C.;

(g) *Routine use* means using a record for the purpose for which it was intended;

(h) *System manager* means the GSA employee who maintains a system of records and who collects, uses, and disseminates the information in it;

(i) *The subject individual* means the person named or discussed in a record or the person to whom a record refers;

(j) *Disclosure* means transferring a record, a copy of a record, or the information contained in a record to someone other than the subject individual, or the reviewing of a record by someone other than the subject individual;

(k) *Access* means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual; and

(l) *Solicitation* means a request by an officer or employee of GSA for a person to provide information about himself or herself.

Subpart 105–64.1—General Policy

§ 105–64.101 Maintenance of records.

§ 105–64.101–1 Collection and use.

(a) *General.* The system manager (also called the manager) should collect information used for determining an individual's rights, benefits, or privileges under GSA programs directly from the subject individual if practical. The system manager should ensure that information collected is used only as intended by the Act and these regulations.

(b) *Soliciting information.* Manager must ensure that when information is solicited, the person is informed of the authority for collecting it; whether providing it is mandatory or voluntary; the purpose for which it will be used; routine uses of the information; and the effect on the individual, if any, of not providing the information. Heads of Services and Staff Offices and Regional Administrators must ensure that forms used to solicit information comply with the Act and these regulations.

(c) *Soliciting a social security number.* Before requesting a person to disclose his or her social security number, ensure either:

(1) The disclosure is required by Federal statute, or;

(2) Disclosure is required under a statute or regulation adopted before January 1, 1975, to verify the person's identity, and that it was part of a system of records in existence before January 1, 1975.

If soliciting a social security number is authorized under paragraph (c) (1) or (2) of this section, inform the person beforehand whether the disclosure is mandatory or voluntary, by what legal or other authority the number is requested, and the use that is to be made of it.

(d) *Soliciting information from third parties.* Officers or employees must inform third parties requested to provide information about another person of the reason for collecting the information.

§ 105–64.101–2 Standards of accuracy.

Managers should ensure that the records used by the Agency to make

determinations about an individual are maintained with the accuracy, relevance, timeliness, and completeness needed to ensure fairness to the individual.

§ 105–64.101–3 Rules of conduct.

Those who design, develop, operate, or maintain a system of records, or any record, must review 5 U.S.C. 552a and the regulations in this part and follow 41 CFR part 105–735, Standards of Conduct, for protecting personal information.

§ 105–64.101–4 Safeguarding systems of records.

Managers must ensure that administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against possible threats or hazards which could be harmful, embarrassing, inconvenient, or unfair to any individual. They must protect personnel information contained in manual and automated systems of records by using the following safeguards:

(a) Storing official personnel folders and work folders in a lockable filing cabinet when not in use. The system manager may use an alternative storage system if it provides the same security as a locked cabinet.

(b) Designating other sensitive records that need safeguards similar to those described in paragraph (a) of this section.

(c) Permitting access to and use of automated or manual personnel records only to persons whose official duties require it, or to a subject individual or to his or her representative.

§ 105–64.101–5 Inconsistent directives of GSA superseded.

This part 105–64 applies or takes precedence when any GSA directive disagrees with it.

§ 105–64.102 Records of other agencies.

If a GSA employee receives a request to review records that are the primary responsibility of another agency, but are maintained by or in the temporary possession of GSA, the employee should consult with the other agency before releasing the records. Records in the custody of GSA that are the responsibility of the Office of Personnel Management (OPM) are governed by rules issued by OPM under the Privacy Act.

§ 105–64.103 Subpoenas and other legal demands.

Access to systems of records by subpoena or other legal process must meet the provisions of ubpart 105–60.6 of this chapter.

Subpart 105–64.2—Disclosure of Records

§ 105–64.201 Conditions of disclosure.

GSA employees may not disclose any record to a person or another agency without the express written consent of the subject individual unless the disclosure is:

(a) To GSA officials or employees who need the information to perform their official duties;

(b) Required by the Freedom of Information Act;

(c) For a routine use identified in the FEDERAL REGISTER;

(d) For Bureau of the Census use under Title 13 of the United States Code;

(e) To someone who has assured GSA in writing that the record is to be used solely for statistical research or reporting, and if it does not identify an individual;

(f) To the National Archives of the United States as a record that has historical or other value warranting permanent retention;

(g) To another agency or instrumentality under the jurisdiction or control of the United States for a civil or criminal law enforcement activity, if the head of the agency or instrumentality or the designated representative has made a written request to GSA specifying the part needed and the law enforcement agency seeking it;

(h) To a person showing compelling circumstances affecting someone's health and safety not necessarily the subject individual (Upon disclosure, a notification must be sent to the subject individual's last known address);

(i) To either House of Congress or to a committee or subcommittee (joint or of either House), to the extent that the matter falls within its jurisdiction;

(j) To the Comptroller General or an authorized representative while performing the duties of the General Accounting Office;

(k) Under an order of a court of competent jurisdiction; or

(l) To a consumer reporting agency under section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f)(1)).

§ 105–64.202 Procedures for disclosure.

(a) On receiving a request to disclose a record, the manager should verify the requester's right to obtain the information under § 105–64.201. Upon verification, the manager may make the records available.

(b) If the manager decides the record can't be disclosed, he or she must inform the requester in writing and state that the denial can be appealed to the GSA Privacy Act Officer, General Services Administration (ATRAI), for a final decision.

§ 105–64.203 Accounting of disclosure.

(a) Except for disclosures made under § 105–64.201 (a) and (b), an accurate account of each disclosure is kept and retained for 5 years or for the life of the record, whichever is longer. The date, reason, and type of information disclosed, as well as the name and address of the person or agency to whom you disclosed it are noted.

(b) The manager also keeps with the account of information disclosed:

(1) A statement justifying the disclosure;

(2) Any documentation related to disclosing a record for statistical or law enforcement use; and

(3) The written consent of the person concerned.

(c) Except when records are disclosed to agencies or instrumentalities for law enforcement under § 105–64.201(g) or from exempt systems (see subpart 105–64.6), accounts of information disclosed must be opened to the person concerned, upon request. Procedures to request such access are given in the following subpart.

Subpart 105–64.3—Individual Access to Records

§ 105–64.301 Access procedures.

§ 105–64.301–1 Form of requests.

(a) A person who wants to see a record or any information concerning him or her that is contained in a system or records maintained in the GSA Central Office should send a written request to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405. For records maintained in GSA regional offices, send the request to the Director, Administrative Services Division at the address shown in § 105–64.301–6.

(b) Requests must be made in writing and must be labeled Privacy Act Request both on the letter and on the envelope. The letter should contain the full name and identifying number of the system as published in the FEDERAL REGISTER; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the person's association with GSA; and any other information that would indicate whether the information is in the system of records. The 10-workday time limit for the agency to reply under § 105–64.301–3, begins when a request is received in the office of the official identified in this section.

(c) Managers may accept oral requests for access, if the requester is properly identified.

§ 105–64.301–2 Special requirements for medical records.

(a) A manager who receives a request for access to official medical records belonging to the Office of Personnel Management and described in Chapter 339, Federal Personnel Manual (records about entrance qualification, fitness for duty, or records filed in the official personnel folder), should refer the matter to a Federal medical officer for a decision under this section. If no medical officer is available, the manager should send the request and the medical reports to the Office of Personnel Management for a decision.

(b) If the Federal medical officer believes the medical records requested by the subject individual discuss a condition that a physician would hesitate to reveal to the person, the manager may release the information only to a physician designated in writing by the subject individual, his or her guardian, or conservator. If the records contain information the physician would likely disclose to the person, the information may be released to anyone the person authorizes in writing to receive it.

§ 105–64.301–3 Granting access.

(a) Upon receiving a request for access to nonexempt records, the manager must make them available to the subject individual or acknowledge the request within 10 workdays after it is received, stating when the records will be available.

(b) If the manager expects a delay of more than the 10 days allowed, he or she should state the reason why in the acknowledgement.

(c) If a request for access does not contain enough information to find the records, the manager should request additional information from the individual and is allowed 10 more workdays after receiving it to make the records available or acknowledge receiving the request.

(d) Records are available during normal business hours at the offices where the records are maintained. Requesters should be prepared to identify themselves by signature and to show other identification verifying their signature.

(e) Managers may permit an individual to examine the original of a nonexempt record and, if asked, provide the person with a copy of the record. Fees are charged only for copies given to the person, not for copies made for the agency's convenience.

(f) A requester may pick up a record in person or receive it by mail, directed to an address provided in the request. The manager should not give a record to a third party to deliver to the subject individual, except medical records as outlined in § 105–64.301–2 or as described in paragraph (g) of this section.

(g) If a person wants to have someone else accompany him or her while reviewing a record or when obtaining a copy of it, he or she must first sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure to review the account of disclosures is the same as the procedures for reviewing a record.

§ 105–64.301–4 Denials of access.

(a) A manager may deny access to a record only if the information is being compiled in reasonable acticipation of a civil action or proceeding as provided under 5 U.S.C. 552(d)(5) or if rules published in the FEDERAL REGISTER state that it is in a system of records that may not be disclosed. These systems are described in Subpart 105–64.6.

(b) If a manager receives a request for access to a record in an exempt system of record, he or she should forward it to the Head of the Service or Staff Office or Regional Administrator, attaching an explanation and recommending the request be denied or granted.

(c) If the manager is the Head of a Service or Staff Office or a Regional Administrator, he or she retains the responsibility for granting or denying the request.

(d) The head of the Service or Staff Office or Regional Administrator, in consultation with legal counsel and other officials concerned, should decide whether the requested record is exempt from disclosure and,

(1) If the record is not exempt, notify the system manager to grant the request under § 105–64.301–3; or

(2) If the record is part of an exempt system he or she should:

(i) Notify the requester that the request is denied, explain why it is denied, and inform the requester of his or her right to have GSA review the decision; or

(ii) Notify the manager to make the record available under § 105–64.301–3, even though it is in an exempted system.

(e) A copy of any denial of a request should be sent to the GSA Privacy Act Officer (ATRAI).

§ 105–64.301–5 Appeal of denial of access within GSA.

(a) A requester who is denied access, in whole or in part, to records pertaining to him or her may file an administrative appeal. Appeals should be addressed to the GSA Privacy Act Officer, General Services Administration (ATRAI), Washington, DC 20405, regardless whether the denial was made by a Central Office or a regional official.

(b) Each appeal to the Privacy Act Officer must be in writing. The appeal should be marked Privacy Act-Access Appeal, on the face of the letter and on the envelope.

(c) On receiving an appeal, the Privacy Act Officer consults with the manager, the official who made the denial, legal counsel, and other officials concerned. If the Privacy Act Officer, after consultation, decides to grant the request, he or she notifies the manager in writing to grant access to the record under § 105–64.301–3, or grants access himself or herself and notifies the requester of that action.

(d) If the Privacy Act Officer decides the appeal should be rejected, he or she sends the request file and any appeal, with a recommendation, to the Deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to grant a request, he or she promptly instructs the system manager in writing to grant access to the record under § 105–64.301–3. The Deputy Administrator sends a copy of the instructions to the Privacy Act Officer, who notifies the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should promptly notify the requester in writing. This action constitutes the final administrative decision on the request and should state:

(1) The reason for rejecting the appeal; and

(2) That the requester has the right to have a court review the final decision under § 105–64.408.

(g) The final decision must be made within 30 workdays from the date the appeal is received by the Privacy Act Officer. The Deputy Administrator may extend the time limit by notifying the requester in writing before the 30 days are up. The Deputy Administrator's letter should explain why the time was extended.

§ 105–64.301–6 Geographic composition, addresses and telephone numbers of regional Administrative Services Division directors.

Region 1

Boston (includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) Telephone: 617–223–5212

Director, Administrative Services Division, General Services Administration (1BR), John W. McCormack Post Office and Courthouse, Boston, MA 02109

Region 2

New York (includes New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands) Telephone: 212–264–8262

Director, Administrative Services Division, General Services Administration (2BR), 26 Federal Plaza, New York, NY 10278

Region 3

Philadelphia (includes Delaware, Maryland, Pennsylvania, Virginia, and West Virginia with the exception of the National Capital Region) Telephone: 215–597–7926

Director, Administrative Services Division, General Services Administration (3BR), Ninth and Market Streets, Philadelphia, PA 19107

Region 4

Atlanta (includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee) Telephone: 404–221–3240

Director, Administrative Services Division, General Services Administration (4BR), 75 Spring Street, SW, Atlanta, GA 30303

Region 5

Chicago (includes Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin) Telephone: 312–353–8421

Director, Administrative Services Division, General Services Administration (5BR), 230 South Dearborn Street, Chicago, IL 60604

Region 6

Kansas City (includes Iowa, Kansas, Missouri, and Nebraska) Telephone: 816–374–7581

Director, Administrative Services Division, General Services Administration (6BR), 1500 East Bannister Road, Kansas City, MO 64131

Region 7

Fort Worth (includes Arkansas, Louisiana, New Mexico, Texas, and Oklahoma) Telephone: 817–334–2350

Director, Administrative Services Division, General Services Administration (7BR), 819 Taylor Street, Fort Worth, TX 76102

Region 8

Denver (includes Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming) Telephone: 303–776–2231
Director, Administrative Services Division, General Services Administration (8BR), Building 41, Denver Federal Center, Denver, CO 80225

Region 9

San Francisco (includes Hawaii, California, Nevada, and Arizona) Telephone: 415–556–9130
Director, Administrative Services Division, General Services Administration (9BR), 525 Market Street, San Francisco, CA 95105

Region 10

Auburn (includes Alaska, Idaho, Oregon, and Washington) Telephone: 206–931–7128
Director, Administrative Services Division, General Services Administration (10BR), GSA Center, Auburn, WA 98002

National Capital Region

Washington, DC (includes the District of Columbia, the counties of Montgomery and Prince Georges in Maryland; the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia) Telephone: 202–472–1650
Director, Adminstrative Services Division, General Services Administration (WBR), Seventh and D Streets, SW, Washington, DC 20407

§ 105–64.302 Fees.

§ 105–64.302–1 Records available at a fee.

The manager shall provide one copy of a record to a requester for the fee stated in § 105–64.302–6.

§ 105–64.302–2 Additional copies.

A reasonable number of additional copies shall be provided for a fee if a requester cannot get copies made commercially.

§ 105–64.302–3 Waiver of fee.

The manager should make a copy of a record of up to 50 pages at no charge to a requester who is a GSA employee. The manager may waive the fee if the cost of collecting it is nearly as large as or greater than the fee, or if furnishing the record without charge is customary or in the public interest.

§ 105–64.302–4 Prepayment of fees over $25.

If a fee is likely to exceed $25, the manager notifies the person to pay the fee before GSA can make the records available. GSA will remit any overpayment or will send the requester a bill for any change over the amount paid.

§ 105–64.302–5 Form of payment.

Copies must be paid for by check or money order made out to the General Services Administration and addressed to the system manager.

§ 105–64.302–6 Reproduction fee schedule.

(a) The fee for copying a GSA record (by electrostatic copier) of 8 by 14 inches or less is 10 cents a page.

(b) The fee for copying a GSA record more than 8 by 14 inches or one that does not permit copying by routine procedures is the same as that charged commercially.

Subpart 105–64.4—Requests To Amend Records

§ 105–64.401 Submission of requests to amend records.

A person who wants to amend a record containing personal information should send a written request to the GSA Privacy Act Officer. A GSA employee who want to amend personnel records should send a written request to the General Services Administration, Director of Personnel (EP), Washington, DC 20405. It should show evidence of and justify the need to amend the record. Both the letter and the envelope should be marked ''Privacy Act–Request to Amend Record''.

§ 105–64.402 Review of requests to amend records.

(a) Managers must acknowledge a request to amend a record within 10 workdays after receiving it. If possible, the acknowledgment should state whether the request will be granted or denied, under § 105–64.404.

(b) In reviewing a record in response to a request to amend, the manager should weigh the accuracy, relevance, timeliness, and completeness of the existing record compared to the proposed

amendment to decide whether the amendment is justified. On a request to delete information, the manager should also review the request and the existing record to decide whether the information is needed by the agency under a statute or an Executive order.

§ 105–64.403 Approval of requests to amend.

If a manager decides that a record should be amended, he or she must promptly correct it and send the person a corrected copy. If an accounting of disclosure was created to document disclosure of a record, anyone who previously received the record must be informed of the substance of the correction and sent a copy of the corrected record. The manager should advise the Privacy Act Officer that the request to amend was approved.

§ 105–64.404 Denial of requests to amend.

(a) If a manager decides that amending a record is improper or that it should be amended in a different way, he or she refers the request and recommendation to the Head of the Service or Staff Office or Regional Administrator through channels.

(b) If the Head of the Service or Staff Office or Regional Administrator decides to amend the record as requested, he or she should promptly return the request to the manager with instructions to make the amendment under § 105–64.403.

(c) If the Head of the Service or Staff Officer or Regional Administrator decides not to amend the record as requested, he or she should promptly advise the requester in writing of the decision. The letter shall (1) state the reason for denying the request; (2) include proposed alternate amendments, if appropriate; (3) state the requester's right to appeal the denial; and (4) tell how to proceed with an appeal.

(d) The Privacy Act Officer must be sent a copy of the original denial of a request to amend a record.

§ 105–64.405 Agreement to alternative amendments.

If the letter denying a request to amend a record proposes alternate amendments and the requester agrees to them, he or she must notify the official who signed the letter. The official should promptly instruct the manager to amend the record under § 105–64.403.

§ 105–64.406 Appeal of denial of request to amend a record.

(a) A requester who is denied a request to amend a record may appeal the denial. The appeal should be sent to the General Services Administration, Privacy Act Officer (ATRAI), Washington, DC 20405. If the request involves a record in a GSA employee's official personnel folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Director, Bureau of Manpower Information Systems, Office of Personnel Management, Washington, DC 20415.

(b) The appeal to the Privacy Act Officer must be in writing and be received within 30 calendar days after the requester receives the letter stating the request was denied. It should be marked ''Privacy Act—Appeal,'' both on the front of the letter and the envelope.

(c) On receiving an appeal, the Privacy Act Officer should consult with the manager, the official who made the denial, legal counsel, and other officials involved. If the Privacy Act Officer, after consulting with these officials, decides that the record should be amended as requested, he or she must promptly inform the manager to amend it under § 105–64.403 and shall notify the requester.

(d) If the Privacy Act Officer, after consulting with the officials listed in the above paragraph, decides to reject an appeal, he or she should send the file, with a recommendation, to the Deputy Administrator for a final administrative decision.

(e) If the Deputy Administrator decides to change the record, he or she should promptly instruct the manager in writing to amend it under § 105–64.403 and send a copy of the instruction to the Privacy Act Officer, who shall notify the requester.

(f) If the Deputy Administrator rejects an appeal, he or she should

promptly notify the requester in writing. This is the final administrative decision on the request and should include:

(1) Why the appeal is rejected;

(2) Alternate amendments that the requester may accept under § 105–64.405;

(3) Notice of the requester's right to file a Statement of Disagreement that must be distributed under § 105–64.407; and

(4) Notice of requester's right to seek court review of the final administrative decision under § 105–64.408.

(g) The final agency decision must be made within 30 workdays from the date the Privacy Act Officer receives the appeal. In unusual circumstances, the Deputy Administrator may extend this time limit by notifying the requester in writing before the 30 days are up. The notice should explain why the limit was extended.

§ 105–64.407 Statements of disagreement.

On receiving a final decision not to amend a record, the requester may file a Statement of Disagreement with the manager. The statement should explain why the requester believes the record to be inaccurate, irrelevant, untimely, or incomplete. The manager must file the statement with the records and include a copy of it in any disclosure of the record. The manager must also provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed if the disclosure was made under the accounting requirement of § 105–64.202.

§ 105–64.408 Judicial review.

For up to 2 years after the final administrative decision under § 105–64.301–4 or § 105–64.406, a requester may seek to have the court overturn the decision. A civil action must be filed in the Federal District Court where the requester lives or has his or her principal place of business, where the agency records are maintained, or in the District of Columbia.

Subpart 105–64.5—Reporting New Systems and Altering Existing Systems

§ 105–64.501 Reporting requirement.

(a) At least 90 calendar days before establishing a new system of records, the manager must notify the Associate Administrator for Policy and Management Systems. The notification must describe and justify each system of records. If the Associate Administrator decides to establish the system, he or she should submit a proposal, at least 60 days before establishing the system, to the President of the Senate, the Speaker of the House of Representatives and the Director of the Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(b) At least 90 calendar days before altering a system of records, the responsible manager must notify the Associate Administrator for Policy and Management Systems. The notification must describe and justify altering the system of records. If the Associate Administrator decides to alter the system, he or she should submit a proposal, at least 60 calendar days before altering the system, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for evaluating the effect on the privacy and other rights of individuals.

(c) Reports required by this regulation are exempt from reports control.

§ 105–64.502 Federal Register notice of establishment of new system or alteration of existing system.

The Associate Administrator for Policy and Management Systems must publish in the FEDERAL REGISTER a notice of intent to establish or alter a system of records:

(a) If he or she receives notice that the Senate, the House of Representatives, and the Office of Management and Budget (OMB) do not object to establishing or altering a system of records, or

(b) If 30 calendar days after submitting the proposal neither OMB nor the Congress objects.

§ 105–64.503 Effective date of new systems of records or alteration of an existing system of records.

When there is no objection to establishing or changing a system of records, it becomes effective 30 calendar days after the notice is published in the FEDERAL REGISTER.

Subpart 105–64.6—Exemptions

§ 105–64.601 General exemptions.

The following systems of records are exempt from the Privacy Act of 1974, except subsections (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), and (11); and (i) of the Act:

(a) Incident Reporting System, GSA/PBS–3.

(b) Investigation Case Files, ADM–24.

The systems of records GSA/PBS–3 and GSA/ADM–24 are exempt to the extent that information in them relates to enforcing the law, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (1) information compiled to identify criminal offenders and alleged offenders, consisting of records of arrests, disposition of criminal charges, sentencing, confinement, release, parole, and probation; (2) information compiled for a criminal investigation, including reports of informants and investigators that identify a person; or (3) reports that identify a person and were prepared while enforcing criminal laws, from arrest or indictment through release from parole. The law exempts these systems to maintain the effectiveness and integrity of the Federal Protective Service and the Office of Inspector General.

§ 105–64.602 Specific exemptions.

The following systems of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974;

(a) Incident Reporting System, GSA/PBS–3.

(b) Investigation Case Files, GSA/ADM–24.

(c) Security Files, HSA/HRO–37.

The systems are exempt (1) if they contain investigatory material compiled for law enforcement. However, if anyone is denied a right, privilege, or benefit for which they would otherwise be eligible because of the material, it should be provided to the person, except if it discloses the identify of a Government source of information which there is an express promise of confidentiality or before the effective date of this section, under an implied promise of confidentiality and (2) investigatory material compiled solely to decide suitability, eligibility, or qualification for Federal employment, military service, Federal contracts, or access to classified information, when disclosing the material would reveal the identity of a confidential Government informant, or prior to the effective date of this section, under an implied promise that their identity is to be held in confidence. The systems are exempted to maintain the effectiveness and integrity of investigations conducted as part of the Federal Protective Service, Office of Inspector General, and Office of Internal Security law enforcement duties or their responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

Subpart 105–64.7—Assistance and Referrals

§ 105–64.701 Requests for assistance and referral.

Requests for assistance and referral to a system manager or other GSA employee charged with implementing these regulations are made to the GSA Privacy Officer (ATRAI), General Services Administration, Washington, DC 20405.

PART 105–67—SALE OF PERSONAL PROPERTY

Sec.

105–67.100 Scope of subpart.
105–67.101 Debarred, suspended and ineligible contractors.

AUTHORITY: 40 U.S.C. 486(c).

§ 105–67.100 Scope of subpart.

This subpart prescribes policies and procedures governing the debarment or suspension of contractors from purchases of Federal personal property (see FPMR part 101–45).

[51 FR 13500, Apr. 21, 1986]

§ 105–67.101 Debarred, suspended and ineligible contractors.

The policies, procedures and requirements of subpart 509.4 of the General Services Administration Acquisition Regulation (GSAR) are incorporated by reference and made applicable to contracts for, and to contractors who engage in, the purchase of Federal personal property.

[51 FR 13500, Apr. 21, 1986]

PART 105–68—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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105–68.510 Participants' responsibilities.

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105–68.600 Purpose.
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105–68.610 Coverage.
105–68.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
105–68.620 Effect of violation.
105–68.625 Exception provision.
105–68.630 Certification requirements and procedures.
105–68.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

APPENDIX A TO PART 105–68—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
APPENDIX B TO PART 105–68—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS
APPENDIX C TO PART 105–68—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*); 40 U.S.C. 486(c).

SOURCE: 53 FR 19198, 19204, May 26, 1988, unless otherwise noted. Redesignated at 54 FR 4962, Jan. 31, 1989.

CROSS REFERENCE: See also Office of Management and Budget notices published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

EDITORIAL NOTE: For additional information, see related documents published at 53 FR 19160, May 26, 1988, and 53 FR 34474, Sept. 6, 1988.

Subpart 105–68.1—General

§ 105–68.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of ''ineligible'' in § 105–68.105), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) These regulations also implement Executive Order 12689 (3 CFR, 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Public Law 103–355, sec. 2455, 108 Stat. 3327) by—

(1) Providing for the inclusion in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* all persons proposed for debarment, debarred or suspended under the Federal Acquisition Regulation, 48 CFR part 9, subpart 9.4; persons against which governmentwide exclusions have been entered under this part; and persons determined to be ineligible; and

(2) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion.

(d) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

[60 FR 33040 and 33059, June 26, 1995]

§ 105–68.105 Definitions.

The following definitions apply to this part:

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

Agency. Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

Civil judgment. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

Conviction. A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with these regulations to exclude a person

from participating in covered transactions. A person so excluded is ''debarred.''

Debarring official. An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

GSA. General Services Administration.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

List of Parties Excluded from Federal Procurement and Nonprocurement Programs. A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Orders 12549 and 12689 and these regulations or 48 CFR part 9, subpart 9.4, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, and those persons who have been determined to be ineligible.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Principal. Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

Respondent. A person against whom a debarment or suspension action has been initiated.

State. Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United

States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

Suspending official. An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

Suspension. An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is ''suspended.''

Voluntary exclusion or voluntarily excluded. A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

[53 FR 19198 and 19204, May 26, 1988, as amended at 53 FR 19198, May 26, 1988; 60 FR 33041 and 33059, June 26, 1995]

§ 105–68.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as ''covered transactions.''

(1) *Covered transaction*. For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction*. Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction*. A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions*. The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart 105–68.2, ''Effect of Action,'' § 105–68.200, ''Debarment or suspension,'' sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 105–68.110(a). Sections 105–68.325, ''Scope of debarment,'' and 105–68.420, ''Scope of suspension,'' govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* In accordance with E.O. 12689 and section 2455 of Public Law 103–355, any debarment, suspension, proposed debarment or other governmentwide exclusion initiated under the Federal Acquisition Regulation (FAR) on or after August 25, 1995, shall be recognized by and effective for Executive Branch agencies and participants as an exclusion under this regulation. Similarly, any debarment, suspension or other governmentwide exclusion initiated under this regulation on or after August 25, 1995, shall be recognized by and effective for those agencies as a debarment or suspension under the FAR.

[53 FR 19198, 19204, May 26, 1988, as amended at 54 FR 4962, Jan. 31, 1989; 60 FR 33041, 33059, June 26, 1995]

§ 105–68.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart 105–68.2—Effect of Action

§ 105–68.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the Executive Branch of the Federal Government for the period of their debarment, suspension, or the period they are proposed for debarment under 48 CFR part 9, subpart 9.4. Accordingly, no agency shall enter into primary covered transactions with such excluded persons during such period, except as permitted pursuant to § 105–68.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been proposed for debarment under 48 CFR part 9, subpart 9.4, debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 105–68.110(a)(1)(ii)) for the period of their exclusion.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for—

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

[60 FR 33041 and 33059, June 26, 1995]

§ 105–68.205 Ineligible persons.

Persons who are ineligible, as defined in § 105–68.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 105–68.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 105–68.315 are excluded in accordance with the terms of their settlements. GSA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 105–68.215 Exception provision.

GSA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 105–68.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 105–68.505(a).

[60 FR 33041 and 33059, June 26, 1995]

§ 105–68.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, proposed debarment under 48 CFR part 9, subpart 9.4, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible or voluntary excluded, except as provided in § 105–68.215.

[60 FR 33041 and 33059, June 26, 1995]

§ 105–68.225 Failure to adhere to restrictions.

(a) Except as permitted under § 105–68.215 or § 105–68.220, a participant shall not knowingly do business under a covered transaction with a person who is—

(1) Debarred or suspended;

(2) Proposed for debarment under 48 CFR part 9, subpart 9.4; or

(3) Ineligible for or voluntarily excluded from the covered transaction.

(b) Violation of the restriction under paragraph (a) of this section may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

(c) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, proposed for debarment under 48 CFR part 9, subpart 9.4, ineligible, or voluntarily excluded

from the covered transaction (See appendix B of these regulations), unless it knows that the certification is erroneous. An agency has the burden of proof that a participant did knowingly do business with a person that filed an erroneous certification.

[60 FR 33041 and 33059, June 26, 1995]

Subpart 105–68.3—Debarment

§ 105–68.300 General.

The debarring official may debar a person for any of the causes in § 105–68.305, using procedures established in §§ 105–68.310 through 105–68.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 105–68.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 105–68.300 through 105–68.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 105–68.215 or § 105–68.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 105–68.315 or of any settlement of a debarment or suspension action; or

(5) Violation of any requirement of subpart 105–68.6 of this part, relating to providing a drug-free workplace, as set forth in § 105–68.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

[53 FR 19198, 19204, May 26, 1988, as amended at 54 FR 4950 and 4962, Jan. 31, 1989; 56 FR 29438, June 27, 1991]

§ 105–68.310 Procedures.

GSA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 105–68.311 through 105–68.314 and 48 CFR subpart 509.4.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29438, June 27, 1991]

§ 105–68.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 105–68.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 105–68.305 for proposing debarment;

(d) Of the provisions of § 105–68.311 through § 105–68.314, and any other GSA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 105–68.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 105–68.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c)(1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 105–68.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 105–68.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, GSA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see subpart 105–68.5).

[53 FR 19198, 19204, May 26, 1988, as amended at 54 FR 4962, Jan. 31, 1989]

§ 105–68.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of subpart 105–68.6 of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of subpart 105–68.6 of this part (*see* 105–68.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 105–68.311 through 105–68.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

[53 FR 19198, 19204, May 26, 1988, as amended at 54 FR 4950 and 4962, Jan. 31, 1989; 56 FR 29438, June 27, 1991]

§ 105–68.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 105–68.311 through 105–68.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall

be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29438, June 27, 1991]

Subpart 105–68.4—Suspension

§ 105–68.400 General.

(a) The suspending official may suspend a person for any of the causes in § 105–68.405 using procedures established in §§ 105–68.410 through 105–68.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 105–68.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 105–68.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 105–68.400 through 105–68.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 105–68.305(a); or

(2) That a cause for debarment under § 105–68.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 105–68.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* GSA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 105–68.411 through § 105–68.413 and 48 CFR subpart 509.4.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29438, June 27, 1991]

§ 105–68.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 105–68.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 105–68.411 through § 105–68.413 and any other GSA

procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 105–68.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 105–68.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 105–68.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 105–68.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an

impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 105–68.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 105–68.325), except that the procedures of §§ 105–68.410 through 105–68.413 shall be used in imposing a suspension.

Subpart 105–68.5—Responsibilities of GSA, Agency and Participants

§ 105–68.500 GSA responsibilities (information dissemination).

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

[53 FR 19198 and 19204, May 26, 1988, as amended at 53 FR 19198, May 26, 1988]

§ 105–68.505 GSA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which GSA has granted exceptions under § 105–68.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 105–68.500(b) and of the exceptions granted under § 105–68.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (202) 501–0688.

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29439, June 27, 1991]

§ 105–68.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in appendix A to this part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (202) 501–0688. Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in appendix B

to this part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (202) 501–0688.

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to GSA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29439, June 27, 1991]

Subpart 105–68.6—Drug-Free Workplace Requirements (Grants)

SOURCE: 55 FR 21688, 21701, May 25, 1990; 55 FR 26442, June 28, 1990, unless otherwise noted.

§ 105–68.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR subparts 9.4, 23.5, and 52.2.

§ 105–68.605 Definitions.

(a) Except as amended in this section, the definitions of § 105–68.105 apply to this subpart.

(b) For purposes of this subpart—

(1) *Controlled substance* means a controlled substance in schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15;

(2) *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) *Criminal drug statute* means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

(4) *Drug-free workplace* means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance;

(5) *Employee* means the employee of a grantee directly engaged in the performance of work under the grant, including:

(i) All *direct charge* employees;

(ii) All *indirect charge* employees, unless their impact or involvement is insignificant to the performance of the grant; and,

(iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll.

This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll; or employees of subrecipients or subcontractors in covered workplaces);

(6) *Federal agency* or *agency* means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) *Grant* means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management government-wide common rule on uniform administrative requirements for grants and cooperative agreements. The term does not include technical assistance that provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) *Grantee* means a person who applies for or receives a grant directly from a Federal agency (except another Federal agency);

(9) *Individual* means a natural person;

(10) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers the instrumentality to be an agency of the State government.

§ 105–68.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government. A determination of such inconsistency may be made only by the agency head or his/her designee.

(c) The provisions of subparts 105–68.1, 105–68.2, 105–68.3, 105–68.4 and 105–68.5 of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

[53 FR 19198, 19204, May 26, 1988, as amended at 56 FR 29438, June 27, 1991]

§ 105–68.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certification under § 105–68.630;

(b) With respect to a grantee other than an individual—

(1) The grantee has violated the certification by failing to carry out the requirements of paragraphs (A)(a) through (g) and/or (B) of the certification (Alternate I to Appendix C) or

(2) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

(c) With respect to a grantee who is an individual—

(1) The grantee has violated the certification by failing to carry out its requirements (Alternate II to Appendix C); or

(2) The grantee is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity.

§ 105–68.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 105–68.615, and in accordance with applicable law, the

grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 105–68.320(a)(2) of this part).

§ 105–68.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 105–68.630 Certification requirements and procedures.

(a)(1) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the Federal agency providing the grant, as provided in appendix C to this part.

(2) Grantees are not required to make a certification in order to continue receiving funds under a grant awarded before March 18, 1989, or under a no-cost time extension of such a grant. However, the grantee shall make a one-time drug-free workplace certification for a non-automatic continuation of such a grant made on or after March 18, 1989.

(b) Except as provided in this section, all grantees shall make the required certification for each grant. For mandatory formula grants and entitlements that have no application process, grantees shall submit a one-time certification in order to continue receiving awards.

(c) A grantee that is a State may elect to make one certification in each Federal fiscal year. States that previously submitted an annual certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. Except as provided in paragraph (d) of this section, this certification shall cover all grants to all State agencies from any Federal agency. The State shall retain the original of this statewide certification in its Governor's office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency has designated a central location for submission.

(d)(1) The Governor of a State may exclude certain State agencies from the statewide certification and authorize these agencies to submit their own certifications to Federal agencies. The statewide certification shall name any State agencies so excluded.

(2) A State agency to which the statewide certification does not apply, or a State agency in a State that does not have a statewide certification, may elect to make one certification in each Federal fiscal year. State agencies that previously submitted a State agency certification are not required to make a certification for Fiscal Year 1990 until June 30, 1990. The State agency shall retain the original of this State agency-wide certification in its central office and, prior to grant award, shall ensure that a copy is submitted individually with respect to each grant, unless the Federal agency designates a central location for submission.

(3) When the work of a grant is done by more than one State agency, the certification of the State agency directly receiving the grant shall be deemed to certify compliance for all workplaces, including those located in other State agencies.

(e)(1) For a grant of less than 30 days performance duration, grantees shall have this policy statement and program in place as soon as possible, but in any case by a date prior to the date on which performance is expected to be completed.

(2) For a grant of 30 days or more performance duration, grantees shall have this policy statement and program in place within 30 days after award.

(3) Where extraordinary circumstances warrant for a specific

grant, the grant officer may determine a different date on which the policy statement and program shall be in place.

§ 105–68.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

(a) When a grantee other than an individual is notified that an employee has been convicted for a violation of a criminal drug statute occurring in the workplace, it shall take the following actions:

(1) Within 10 calendar days of receiving notice of the conviction, the grantee shall provide written notice, including the convicted employee's position title, to every grant officer, or other designee on whose grant activity the convicted employee was working, unless a Federal agency has designated a central point for the receipt of such notifications. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(2) Within 30 calendar days of receiving notice of the conviction, the grantee shall do the following with respect to the employee who was convicted.

(i) Take appropriate personnel action against the employee, up to and including termination, consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(b) A grantee who is an individual who is convicted for a violation of a criminal drug statute occurring during the conduct of any grant activity shall report the conviction, in writing, within 10 calendar days, to his or her Federal agency grant officer, or other designee, unless the Federal agency has designated a central point for the receipt of such notices. Notification shall include the identification number(s) for each of the Federal agency's affected grants.

(Approved by the Office of Management and Budget under control number 0991–0002)

APPENDIX A TO PART 105–68—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042 and 33059, June 26, 1995]

APPENDIX B TO PART 105–68—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with

a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042 and 33059, June 26, 1995]

APPENDIX C TO PART 105–68—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

INSTRUCTIONS FOR CERTIFICATION

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include

the identification number(s) of each affected grant.

[55 FR 21690, 21701, May 25, 1990]

PART 105–69—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

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105–69.605 Inspector General report.
APPENDIX A TO PART 105–69—CERTIFICATION REGARDING LOBBYING
APPENDIX B TO PART 105–69—DISCLOSURE FORM TO REPORT LOBBYING

AUTHORITY: Sec. 319, Pub. L. 101–121 (31 U.S.C. 1352); 40 U.S.C. 486(c).

SOURCE: 55 FR 6737 and 6753, Feb. 26, 1990, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 54 FR 52306, December 20, 1989.

Subpart A—General

§ 105–69.100 Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative ageement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in appendix A, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, set forth in appendix A, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form, set forth in appendix B, if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

§ 105–69.105 Definitions.

For purposes of this part:

(a) *Agency*, as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

(b) *Covered Federal action* means any of the following Federal actions:

(1) The awarding of any Federal contract;

(2) The making of any Federal grant;

(3) The making of any Federal loan;

(4) The entering into of any cooperative agreement; and,

(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. Loan guarantees and loan insurance are addressed independently within this part.

(c) *Federal contract* means an acquisition contract awarded by an agency, including those subject to the Federal Acquisition Regulation (FAR), and any other acquisition contract for real or personal property or services not subject to the FAR.

(d) *Federal cooperative agreement* means a cooperative agreement entered into by an agency.

(e) *Federal grant* means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government or a direct appropriation made by law to any person. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, loan insurance, interest subsidies, insurance, or direct United States cash assistance to an individual.

(f) *Federal loan* means a loan made by an agency. The term does not include loan guarantee or loan insurance.

(g) *Indian tribe* and *tribal organization* have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

(h) *Influencing or attempting to influence* means making, with the intent to influence, any communication to or appearance before an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

(i) *Loan guarantee* and *loan insurance* means an agency's guarantee or insurance of a loan made by a person.

(j) *Local government* means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

(k) *Officer or employee of an agency* includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;

(2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;

(3) A special Government employee as defined in section 202, title 18, U.S. Code; and,

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

(l) *Person* means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(m) *Reasonable compensation* means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer

or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

(n) *Reasonable payment* means, with respect to perfessional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

(o) *Recipient* includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

(p) *Regularly employed* means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement or a commitment providing for the United States to insure or guarantee a loan, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, cooperative agreement, loan insurance commitment, or loan guarantee commitment. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

(q) *State* means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

§ 105–69.110 Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or

(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000,

unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraph (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;

(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;

(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,

(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement,

shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

Subpart B—Activities by Own Employees

§ 105–69.200 Agency and legislative liaison.

(a) The prohibition on the use of appropriated funds, in § 105–69.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph (a) of this section, the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph (a) of this section, the following agencies and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507 and other subsequent amendments.

(e) Only those activities expressly authorized by this section are allowable under this section.

§ 105–69.205 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 105–69.100 (a), does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract,

grant, loan, or cooperative agreement or an extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by this section are allowable under this section.

§ 105–69.210 Reporting.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

Subpart C—Activities by Other Than Own Employees

§ 105–69.300 Professional and technical services.

(a) The prohibition on the use of appropriated funds, in § 105–69.100 (a), does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract, grant, loan, or cooperative agreement or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract, grant, loan, or cooperative agreement.

(b) The reporting requirements in § 105–69.110 (a) and (b) regarding filing a disclosure form by each person, if required, shall not apply with respect to professional or technical services rendered directly in the preparation, submission, or negotiation of any commitment providing for the United States to insure or guarantee a loan.

(c) For purposes of paragraph (a) of this section, ''professional and technical services'' shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting or a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational

capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(d) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(e) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(f) Only those services expressly authorized by this section are allowable under this section.

Subpart D—Penalties and Enforcement

§ 105–69.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(c) A filing or amended filing on or after the date on which an administrative action for the imposition of a civil penalty is commenced does not prevent the imposition of such civil penalty for a failure occurring before that date. An administrative action is commenced with respect to a failure when an investigating official determines in writing to commence an investigation of an allegation of such failure.

(d) In determining whether to impose a civil penalty, and the amount of any such penalty, by reason of a violation by any person, the agency shall consider the nature, circumstances, extent, and gravity of the violation, the effect on the ability of such person to continue in business, any prior violations by such person, the degree of culpability of such person, the ability of the person to pay the penalty, and such other matters as may be appropriate.

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $10,000, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $10,000 and $100,000, as determined by the agency head or his or her designee.

(f) An imposition of a civil penalty under this section does not prevent the United States from seeking any other remedy that may apply to the same conduct that is the basis for the imposition of such civil penalty.

§ 105–69.405 Penalty procedures.

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. sections 3803 (except subsection (c)), 3804, 3805, 3806, 3807, 3808, and 3812, insofar as these provisions are not inconsistent with the requirements herein.

§ 105–69.410 Enforcement.

The head of each agency shall take such actions as are necessary to ensure that the provisions herein are vigorously implemented and enforced in that agency.

Subpart E—Exemptions

§ 105–69.500 Secretary of Defense.

(a) The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibition whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of each such written exemption to Congress immediately after making such a determination.

(b) The Department of Defense may issue supplemental regulations to implement paragraph (a) of this section.

Subpart F—Agency Reports

§ 105–69.600 Semi-annual compilation.

(a) The head of each agency shall collect and compile the disclosure reports (see appendix B) and, on May 31 and November 30 of each year, submit to the Secretary of the Senate and the Clerk of the House of Representatives a report containing a compilation of the information contained in the disclosure reports received during the six-month period ending on March 31 or September 30, respectively, of that year.

(b) The report, including the compilation, shall be available for public inspection 30 days after receipt of the report by the Secretary and the Clerk.

(c) Information that involves intelligence matters shall be reported only to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(d) Information that is classified under Executive Order 12356 or any successor order shall be reported only to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives or the Committees on Armed Services of the Senate and the House of Representatives (whichever such committees have jurisdiction of matters involving such information) and to the Committees on Appropriations of the Senate and the House of Representatives in accordance with procedures agreed to by such committees. Such information shall not be available for public inspection.

(e) The first semi-annual compilation shall be submitted on May 31, 1990, and shall contain a compilation of the disclosure reports received from December 23, 1989 to March 31, 1990.

(f) Major agencies, designated by the Office of Management and Budget (OMB), are required to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives no later than with the compilations due on May 31, 1991. OMB shall provide detailed specifications in a memorandum to these agencies.

(g) Non-major agencies are requested to provide machine-readable compilations to the Secretary of the Senate and the Clerk of the House of Representatives.

(h) Agencies shall keep the originals of all disclosure reports in the official files of the agency.

§ 105–69.605 Inspector General report.

(a) The Inspector General, or other official as specified in paragraph (b) of this section, of each agency shall prepare and submit to Congress each year, commencing with submission of the President's Budget in 1991, an evaluation of the compliance of that agency with, and the effectiveness of, the requirements herein. The evaluation may include any recommended changes that may be necessary to strengthen or improve the requirements.

(b) In the case of an agency that does not have an Inspector General, the agency official comparable to an Inspector General shall prepare and submit the annual report, or, if there is no such comparable official, the head of the agency shall prepare and submit the annual report.

(c) The annual report shall be submitted at the same time the agency submits its annual budget justifications to Congress.

(d) The annual report shall include the following: All alleged violations relating to the agency's covered Federal actions during the year covered by the report, the actions taken by the head of the agency in the year covered by the report with respect to those alleged violations and alleged violations in previous years, and the amounts of civil penalties imposed by the agency in the year covered by the report.

APPENDIX A TO PART 105–69—CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

APPENDIX B TO PART 105–69—DISCLOSURE FORM TO REPORT LOBBYING

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and MIddle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ **Page** _____ **of** _____

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PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

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AUTHORITY: 40 U.S.C. 486(c); 31 U.S.C. 3809.

SOURCE: 52 FR 45188, Nov. 25, 1987, unless otherwise noted.

§ 105–70.000 Scope.

This part (a) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (b) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 105–70.001 Basis.

This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

§ 105–70.002 Definitions.

The following shall have the meanings ascribed to them below unless the context clearly indicates otherwise:

(a) *ALJ* means an Administrative Law Judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the Authority pursuant to 5 U.S.C. 3344.

(b) *Authority* means the General Services Administration.

(c) *Authority Head* means the Administrator or Deputy Administrator of General Services.

(d) *Benefit* means, in the context of statements, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) *Claim* means any request, demand or submission—

(1) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded, or

(B) Will reimburse such recipient or party for any portion of the money paid on such request of demand; or

(3) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) *Complaint* means the administrative complaint served by the reviewing official on the defendant under § 105–70.007.

(g) *Defendant* means any person alleged in a complaint under § 105–70.007 to be liable for a civil penalty or assessment under § 105–70.003.

(h) *Individual* means a natural person.

(i) *Initial Decision* means the written decision of the ALJ required by § 105–70.010 or § 105–70.037, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(j) *Investigating Official* means the Inspector General of the General Services Administration or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(k) *Knows or has reason to know* means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(l) *Makes*, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, ''making'' or ''made'', shall likewise include the corresponding forms of such terms.

(m) *Person* means any individual, partnership, corporation, association, or private organization.

(n) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. (An individual may appear *pro se;* a corporate officer or an owner may represent a business entity.)

(o) *Reviewing Official* means the General Counsel of the General Services Administration or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(3) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(p) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 105–70.003 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

[52 FR 45188, Nov. 25, 1987, as amended at 61 FR 67235, Dec. 20, 1996]

§ 105–70.004 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her

behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege, or any combination of the foregoing.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 105–70.005 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 105–70.004(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 105–70.003 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 105–70.007.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 105–70.003 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 105–70.006 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 105–70.007 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 105–70.003(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 105–70.003(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 105–70.007 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 105–70.008.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the

statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 105–70.010.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 105–70.008 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his representative.

§ 105–70.009 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 105–70.011. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 105–70.010 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 105–70.009(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 105–70.008, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 105–70.003, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 105–70.038.

(h) The defendant may appeal to the Authority Head the decision denying a motion to reopen by filing a notice of appeal with the Authority Head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Authority Head decides the issue.

(i) If the defendant files a timely notice of appeal with the Authority Head, the ALJ shall forward the record of the proceeding to the Authority Head.

(j) The Authority Head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Authority Head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Authority Head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Authority Head decides that the defendant's failure to file a timely answer is not excused, the Authority Head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Authority Head issues such decision.

§ 105–70.011 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 105–70.012 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 105–70.008. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 105–70.013 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 105–70.014 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Authority Head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Authority, including in the offices of either the investigating official or the reviewing official.

§ 105–70.015 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 105–70.016 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed not further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 105–70.017 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral argument at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 105–70.018 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibility of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

§ 105–70.019 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 105–70.020 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 105–70.004(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 105–70.005 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 105–70.009.

§ 105–70.021 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 105–70.022 and 105–70.023, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data and

documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery*. (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 105–70.024.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery;

(5) The ALJ may grant discovery subject to a protective order under § 105–70.024.

(e) *Depositions*. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 105–70.008.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 105–70.022 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 105–70.033(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 105–70.023 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is

to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 105–70.008. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 105–70.024 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 105–70.025 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Authority, a check for witness fees and mileage need not accompany the subpoena.

§ 105–70.026 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 105–70.008 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting

forth the manner of service, shall be proof of service.

§ 105–70.027 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 105–70.028 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 105–70.029 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 105–70.030 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 105–70.003 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 105–70.031 Determining the amount of penalties and assessments.

In determining an appropriate amount of civil penalties and assessments, the ALJ and the Authority Head, upon appeal, should evaluate any circumstances presented that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose.

§ 105–70.032 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 105–70.033 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 105–70.022(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harrassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 105–70.034 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 105–70.024.

§ 105–70.035 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Authority Head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 105–70.024.

§ 105–70.036 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 105–70.037 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 105–70.003.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Authority Head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Authority Head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 105–70.038 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Authority Head and shall be final and

binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Authority Head in accordance with § 105–70.039.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Authority Head in accordance with § 105–70.039.

§ 105–70.039 Appeal to Authority Head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Authority Head by filing a notice of appeal with the Authority Head in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 105–70.038, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Authority Head may extend the initial 30 day period for an additional 30 days if the defendant files with the Authority Head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Authority Head and the time for filing motions for reconsideration under § 105–70.038 has expired, the ALJ shall forward the record of the proceeding to the Authority Head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Authority may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Authority Head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Authority Head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Authority Head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Authority Head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Authority Head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Authority Head shall promptly serve each party to the appeal with a copy of the decision of the Authority Head and a statement describing the right of any person determined to be liable for a penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Authority Head serves the defendant with a copy of the Authority Head's decision, a determination that a defendant is liable under § 105–70.003 is final and is not subject to judicial review.

§ 105–70.040 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Authority Head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Authority Head shall stay the process immediately. The Authority Head may order the process resumed only upon

receipt of the written authorization of the Attorney General.

§ 105–70.041 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Authority Head.

(b) No administrative stay is available following a final decision of the Authority Head.

§ 105–70.042 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Authority Head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 105–70.043 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize action for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 105–70.044 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 105–70.042 or § 105–70.043, or any amount agreed upon in a compromise or settlement under § 105–70.046, may be collected by administrative offset under 30 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 105–70.045 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 105–70.046 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Authority Head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 105–70.042 or during the pendency of any action to collect penalties and assessments under § 105–70.043.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 105–70.042 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Authority Head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Authority Head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 105–70.047 Limitations.

(a) The Program Fraud Civil Remedies Act of 1986 provides that a hearing shall be commenced within 6 years after the date on which a claim or statement is made. 31 U.S.C. 3808(a). The statute also provides that the hearing is commenced by the mailing or delivery of the presiding officer's (ALJ's) notice. 31 U.S.C. 3803(d)(2)(B). Accordingly, the notice of hearing provided for in § 105–70.012 herein shall be served within 6 years after the date on which a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 105–70.010(b) shall be deemed a

notice of hearing for purposes of this section.

PART 105–71—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS WITH STATE AND LOCAL GOVERNMENTS

Subpart 105–71.1—General

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105–71.101 Scope of §§105–71.100 through 105–71.105.
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Subpart 105–71.16—Entitlements [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, (40 U.S.C. 486(c)).

SOURCE: 58 FR 43270, Aug. 16, 1993, unless otherwise noted.

Subpart 105–71.1—General

§ 105–71.100 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 105–71.101 Scope of §§ 105–71.100 through 105–71.105.

This section contains general rules pertaining to this part and procedures for control of exceptions from this subpart.

§ 105–71.102 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash constributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means: (1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report); (2) for construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district,

intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of the third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee.

Termination does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of

the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 105–71.103 Applicability.

(a) *General.* Sections 105–71.100 through 105–71.152 of this subpart apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 105–71.105 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, subtitle D, chapter 2, section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and part C of Title V. Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medical Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act);

(ii) Commodity Assistance (section 6 of the Act);

(iii) Special Meal Assistance (section 11 of the Act);

(iv) Summer Food Service for Children (section 13 of the Act); and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 105–71.103(a)(3) through (8) are subject to Subpart—Entitlement.

§ 105–71.104 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 105–71.105.

§ 105–71.105 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart 105–71.11—Pre-Award Requirements

§ 105–71.110 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted.

Previously submitted pages with information that is still current need not be resubmitted.

§ 105–71.111 State plans.

(a) *Scope*. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements*. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances*. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments*. A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) A material change in any State law, organization, policy, or State agency operation.

The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 105–71.112 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible, and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

§ 105–71.120 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting*. Accurate, current, and complete disclosure of the financial result of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records*. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control*. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control*. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost*. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability and allocability of costs.

(6) *Source documentation*. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management*. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 105–71.121 Payment.

(a) *Scope*. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard*. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances*. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement*. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this

section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital the awarding agency may provide cash or a working capital, advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 105–71.143(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 105–71.122 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles*. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles:

For the costs of a—	Use the principles in—
State, local or Indian tribal government..	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions	OMB Circular A–21
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 105–71.123 Period of availability of funds.

(a) *General*. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover or unobligated balances are permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations*. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 105–71.124 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable*. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements apply.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements*. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing*. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements*. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract or any other award of Federal funds.

(4) *Costs financed by program income*. Costs financed by program income, as defined in § 105–71.125, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 105–71.125(g).)

(5) *Services or property financed by income earned by contractors*. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other

provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect cost. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of contributions.

(iii) A third party in-kind contribution to a fixed price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and the title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply.

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be

counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 105–71.122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition*. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-Federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property*. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in the building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 105–71.125 Program income.

(a) *General*. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income*. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income*. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Government revenues*. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties*. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 105–71.134.)

(f) *Property*. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of § 105–71.131 and § 105–71.132.

(g) *Use of program income*. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the

grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction*. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition*. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching*. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period*. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 105–71.126 Non-Federal audit.

(a) *Basic rule*. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.'' The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees*. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure the appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection*. In arranging for audit services, § 105–71.136 shall be followed.

[58 FR 43270, Aug. 16, 1993, as amended at 62 FR 45939, 45944, Aug. 29, 1997]

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

§ 105–71.130 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 105–71.122) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*— (1) *Non-construction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and non-construction projects.* When a grant or subgrant provides funding for both construction and non-construction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from non-construction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under non-construction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 105–71.136 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accomplished by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 105–71.122) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved

project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 105–71.131 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives.

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from the sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 105–71.132 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 105–71.125(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee

may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the data of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 105–71.132(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 105–71.133 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are

not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 105–71.134 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 105–71.135 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension''.

§ 105–71.136 Procurement.

(a) *States*. When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards*. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agent will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements

for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protests to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition*. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §105–71.136. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except

in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures*. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 105–71.136(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such

discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 105–71.122). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system

to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining

to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

[58 FR 43270, Aug. 16, 1993, as amended at 60 FR 19639, 19644, Apr. 19, 1995]

§ 105–71.137 Subgrants.

(a) *States*. States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 105–71.142 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees*. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions*. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 105–71.110;

(2) Section 105–71.111;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 105–71.121; and

(4) Section 105–71.150.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

§ 105–71.140 Monitoring and reporting program performance.

(a) *Monitoring by grantees*. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Non-construction performance reports*. The Federal agency may, if it decides that performance information

available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semiannual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may exend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 105–71.141 Financial reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB

to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decision making purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date on any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all non-construction grants and for construction grants when required in accordance with paragraph (e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter of credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272A, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriated when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form

270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 105–71.141(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 105–71.141(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 105–71.141(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 105–71.141(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 105–71.141(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 105–71.141(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 105–71.141(b)(2).

§ 105–71.142 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees of subgrantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 105–71.136(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on

the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rates at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computations are not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 105–71.143 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporary withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Without further awards for the program, or

(5) Take other remedies that may be legally available,

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency

will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in case of a termination, are noncancellable, and,

(2) The cost would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 105–71.135).

§ 105–71.144 Termination for convenience.

Except as provided in § 105–71.143 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 105–71.143 or paragraph (a) of this section.

Subpart 105–71.15—After-the-Grant Requirements

§ 105–71.150 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 105–71.132(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash

advanced that is not authorized to be retained for use on other grants.

§ 105–71.151 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 105–71.142;

(d) Property management requirements in § 105–71.131 and § 105–71.132; and

(e) Audit requirements in § 105–71.126.

§ 105–71.152 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch.II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart 105–71.16—Entitlements [Reserved]

PART 105–72—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

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APPENDIX A TO PART 105–72—CONTRACT PROVISIONS

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 59 FR 47268, Sept. 15, 1994, unless otherwise noted.

Subpart 105–72.1—General

§ 105–72.100 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in § 105–72.103, and § 105–72.204 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 105–72.101 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of

any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed* costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds* authorized means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts

owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §105–72.304 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient.

The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in paragraph 105–72.101(e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of noncash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations, for financial reports prepared on a cash basis,* means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 105–72.102 Effect on other issuances.

For awards subject to this regulation, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this regulation shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 105–72.103.

§ 105–72.103 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this regulation when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this regulation shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 105–72.104 Subawards.

Unless sections of this regulation specifically exclude subrecipients from coverage, the provisions of this regulation shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' 41 CFR 105–71.

Subpart 105–72.2—Pre-Award Requirements

§ 105–72.200 Purpose.

Sections 105–72.201 through 105–72.207 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 105–72.201 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 105–72.202 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 105–72.203 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 105–72.204 Special award conditions.

If an applicant or recipient:

(a) Has a history of poor performance,

(b) Is not financially stable,

(c) Has a management system that does not meet the standards prescribed in this regulation,

(d) Has not conformed to the terms and conditions of a previous award, or

(e) Is not otherwise responsible;

Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

§ 105–72.205 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs.''

§ 105–72.206 Resource Conservation and Recovery Act.

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 105–72.207 Certifications and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart 105–72.30—Post-Award Requirements/Financial and Program Management

§ 105–72.300 Purpose of financial and program management.

Sections 105–72.301 through 105–72.308 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 105–72.301 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 105–

72.602. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

§ 105–72.302 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) Financial management systems that meet the standards for fund control and accountability as established in § 105–72.301.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the

Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use womenowned and

minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this regulation, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) *SF–270, Request for Advance or Reimbursement*. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) *SF–271, Outlay Report and Request for Reimbursement for Construction Programs*. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 105–72.303 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this regulation, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current

fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 105–72.304 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one

or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 105–72.204.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See § 105–72.400 through § 105–72.407).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 105–72.305 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract

Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this regulation and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §105–72.307.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request

prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and non-construction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 105–72.306 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

[59 FR 47268, Sept. 15, 1994, as amended at 62 FR 45939, 45944, Aug. 29, 1997]

§ 105–72.307 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State and Local Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 105–72.308 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Subpart 105–72.40—Post-Award Requirements/Property Standards

§ 105–72.400 Purpose of property standards.

Sections 105–72.401 through 105–72.407 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 105–72.401 through § 105–72.407.

§ 105–72.401 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 105–72.402 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 105–72.403 Federally-owned and exempt property.

(a) *Federally-owned property*. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals.'') Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property*. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 105–72.404 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal

participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes.

Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 105–72.405 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 105–72.406 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to paragraph (c)(1) and (2) of this section.

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 105–72.404(g).

§ 105–72.407 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Subpart 105–72.50—Post-Award Requirements/Procurement Standards

§ 105–72.500 Purpose of procurement standards.

Sections 105–72.501 through 105–72.508 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 105–72.501 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 105–72.502 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 105–72.503 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 105–72.504 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be

the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this regulation.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 105–72.505 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 105–72.506 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 105–72.507 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 105–72.508 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the

contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

Subpart 105–72.60—Post-Award Requirements/Reports and Records

§ 105–72.600 Purpose of reports and records.

Sections 105–72.601 through 105–72.603 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 105–72.601 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 105–72.306.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 105–72.602 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) *SF–269 or SF–269A, Financial Status Report.* (i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semiannual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) *SF–272, Report of Federal Cash Transactions.* (i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272, 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 105–72.301, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 105–72.603 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc., as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation

plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Subpart 105–72.70—Post-Award Requirements/Termination and Enforcement

§ 105–72.700 Purpose of termination and enforcement.

Section 105–72.701 and § 105–72.702 set forth uniform suspension, termination and enforcement procedures.

§ 105–72.701 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a) (1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 105–72.801(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 105–72.702 Enforcement.

(a) *Remedies for noncompliance*. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 105–72.204, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals*. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination*. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after

termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraph (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 105–72.203).

Subpart 105–72.80—After-the-Award Requirements

§ 105–72.800 Purpose.

Sections 105–72.801 through 105–72.803 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 105–72.801 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 105–72.401 through § 105–72.407.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 105–72.802 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 105–72.306.

(4) Property management requirements in § 105–72.401 through § 105–72.407.

(5) Records retention as required in § 105–72.603.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 105–72.803(a), including those for property management

as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 105–72.803 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraph (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, Federal Claims Collection Standards.

APPENDIX A TO PART 105–72—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity,'' as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative

Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 105–735—STANDARDS OF CONDUCT

AUTHORITY: 5 U.S.C. 7301.

SOURCE: 61 FR 56403, Nov. 1, 1996, unless otherwise noted.

§ 105–735.1 Cross-references to employee ethical conduct standards, financial disclosure regulations, and other regulations.

Employees of the General Services Administration are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, GSA's regulations at 5 CFR part 6701 which supplement the executive branch-wide standards, the regulations on employee responsibilities and conduct at 5 CFR part 735, and the executive branch financial disclosure regulations contained in 5 CFR part 2634, and GSA Order ADM 7900.9A, which can be obtained from the GSA Office of General Counsel.

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SOURCE: 63 FR 19616, Apr. 20, 1998, unless otherwise noted.

Subpart 109–1.1—Regulation System

§109–1.100–50 Scope of subpart.

This subpart sets forth the Department of Energy (DOE) Property Management Regulations (DOE–PMR) which establish uniform DOE property management policies, regulations, and procedures that implement and supplement the Federal Property Management Regulations. Property management statutory authorities that are unique to the Department (e.g., section 161g of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) and section 3155 of

the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 72741)) are not addressed in these regulations.

§109–1.100–51 Definitions and acronyms.

(a) *Definitions*. As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

Administratively controlled items means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

Automatic data processing equipment means, as used in this part and to the extent that such equipment is used to process export controlled information or unclassified controlled nuclear information, any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Designated contractors means those on-site DOE contractors to which the DOE–PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental restoration and management contractors, and other major prime contractors located at DOE sites.

Direct operations means operations conducted by DOE personnel.

Disposal means the process of reutilizing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

Dual-Use List means nuclear-related material, equipment, and related technology as described in the International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 2.

Equipment means any item of personal property having a unit acquisition cost of $5,000 or more and having the potential for maintaining its integrity (i.e., not expendable due to use) as an item.

Especially designed or prepared property means equipment and material designed or prepared especially for use in the nuclear fuel cycle and described in the Nuclear Suppliers Group Trigger List (INFCIRC 254 Part 1).

Export controlled information means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, or a DOE authorization for export, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

Export controlled property means property the export of which is subject to licensing by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Nuclear Regulatory Commission, or authorized by the U.S. Department of Energy.

Hazardous property means any personal property, including scrap or waste but excluding property involving a radiological hazard, that is ignitable, corrosive, reactive, or toxic because of its quantity, concentration, or physical, chemical, or infectious characteristics, or that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act, or the Toxic Substances Control Act. Such property may be in solid, liquid, semi-liquid, or contained gas form and may cause or significantly contribute to an increase in mortality or illness, or pose present or potential hazard to human health or the environment when improperly used, treated, stored, transported, disposed of, or mismanaged.

Heads of field organizations means the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, and the Office of Headquarters Procurement Operations, shall be considered a field organization for purposes of these regulations.

High risk personal property means property that, because of its potential impact on public health and safety, the

environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

Munitions list means articles, services, and related technical data designated as defense articles and defense services by the Arms Export Control Act of 1968, as amended.

Nuclear weapon component or weapon-like component means parts of whole war reserve nuclear weapon systems, joint test assemblies, trainers, or test devices, including associated testing, maintenance, and handling equipment; or items that simulate such parts.

Personal property means property of any kind, except for real estate and interests therein (such as easements and rights-of-way), and permanent fixtures which are Government-owned, chartered, rented, or leased from commercial sources by and in the custody of DOE or its designated contractors; source, byproduct, special nuclear materials, and atomic weapons as defined in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014), as amended; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Personal property management means the development, implementation, and administration of policies, standards, programs, practices and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements, maintenance of related operating records, and disposal of personal property (exclusive of the property accounting records).

Proliferation-sensitive property means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Suppliers Group Trigger List and Dual-Use List, or equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

Radioactive property means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

Sensitive items means those items of personal property which are considered to be susceptible to being appropriated for personal use or which can be readily converted to cash, for example: Firearms, portable photographic equipment, binoculars, portable tape recorders, portable calculators, portable power tools, portable computers, and portable communications equipment.

Special nuclear material means plutonium, uranium 233, uranium enriched in the isotope 233 or 235, any other materials which the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

Trigger List means nuclear material, equipment, and related technology as described in the INFCIRC 254, Part 1.

Unclassified controlled nuclear information means U.S. Government information pertaining to atomic energy defense activities as defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities.

(b) *Acronyms.* As used in this chapter, the following acronyms apply:

ADPE: Automatic Data Processing Equipment
CFR: Code of Federal Regulations
CSC: Customer Supply Center
DEAR: Department of Energy Acquisition Regulation
DOD: Department of Defense
DOE: Department of Energy
DOE–PMR: Department of Energy Property Management Regulations
DPMO: Departmental Property Management Officer
ECCN: Export Control Classification Number
ECI: Export Controlled Information
EHFFP: Equipment Held For Future Projects
EOQ: Economic Order Quantity

ERLE: Energy-Related Laboratory Equipment
FAR: Federal Acquisition Regulation
FPMR: Federal Property Management Regulations
FSC: Federal Supply Classification
FSCG: Federal Supply Classification Group
GAO: General Accounting Office
GSA: General Services Administration
GVWR: Gross Vehicle Weight Rating
INFCIRC: International Atomic Energy Agency Information Circular
IFMS: Interagency Fleet Management System
M&O: Management and Operating
MCTL: Military Critical Technologies List
OCRM: Office of Contract and Resource Management
OPMO: Organizational Property Management Officer
OPSEC: Operations Security
PPL: Personal Property Letter
REAPS: Reportable Excess Automated Property System
SNM: Special Nuclear Material
UCNI: Unclassified Controlled Nuclear Information
U.S.C.: United States Code

§109–1.101 Federal Property Management Regulations System.

§109–1.101–50 DOE–PMR System.

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

§109–1.102 Federal Property Management Regulations.

§109–1.102–50 DOE–PMRs.

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances affecting the Department's personal property management program.

§109–1.103 FPMR temporary regulations.

§109–1.103–50 DOE–PMR temporary policies and bulletins

(a) Subject to applicable procedural requirements in 41 U.S.C. 418b, 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication of temporary policies that should not be codified in the Code of Federal Regulations (CFR).

(b) DOE–PMR Bulletins are used to disseminate information concerning personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR or DOE–PMR.

§109–1.104 Publication and distribution of FPMR.

§109–1.104–50 Publication and distribution of DOE–PMR.

The DOE–PMR will be published in the FEDERAL REGISTER and will appear in the CFR as Chapter 109 of Title 41, Public Contracts and Property Management. Loose leaf publications of the DOE–PMR will be distributed to DOE offices.

§109–1.106 Applicability of FPMR.

§109–1.106–50 Applicability of FPMR and DOE–PMR.

(a) The FPMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 and Pub. L. 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or head of a contracting activity may designate contractors other than designated contractors to which the FPMR and DOE–PMR apply.

(e) The FPMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(f) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE Acquisition Regulation (DEAR), 48 CFR part 945.

(g) Regulations for the management of personal property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) and DOE Order 534.1, Accounting.

§ 109–1.107 Agency consultation regarding FPMR.

§ 109–1.107–50 Consultation regarding DOE–PMR.

The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

§ 109–1.108 Agency implementation and supplementation of FPMR.

(a) The DOE–PMR includes basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR. In the absence of any DOE–PMR issuance, the basic FPMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR and shall not duplicate or paraphrase the FPMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

§ 109–1.110–50 Deviation procedures.

(a) Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contractor affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(b)(1) Requests for deviations from applicable portions of the FPMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Departmental Property Management Officer (DPMO).

(2) Requests for deviations from aviation related portions of the FPMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO or on-site DOE Aviation Management Officer with supporting documentation to the DOE Senior Aviation Management Official.

(c) The Deputy Assistant Secretary for Procurement and Assistance Management is authorized to grant deviations to the DOE–PMR.

(d) Requests for deviations from the FPMR will be coordinated with GSA by the DPMO.

Subpart 109–1.50—Personal Property Management Program

§ 109–1.5000 Scope of subpart.

This subpart supplements the FPMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an efficient personal property management program in DOE.

§ 109–1.5001 Policy.

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs efficiently and in accordance with applicable Federal statutes and regulations.

§ 109–1.5002 Personal property management program objectives.

The objectives of the DOE personal property management program are to provide:

(a) A system for efficiently managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

Subpart 109–1.51—Personal Property Management Standards and Practices

§ 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property. The standards and practices that apply to equipment shall be based on the unit acquisition cost threshold specified in the definition of equipment contained in section § 109–1.100–51 of this part. No other acquisition cost threshold shall apply.

§ 109–1.5101 Official use of personal property.

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property as authorized by law;

(b) As otherwise authorized by law and approved by the Director, Office of Administrative Services; heads of field organizations for their respective organizations; or a contracting officer for contractor-held property.

§ 109–1.5102 Maximum use of personal property.

Personal property management practices shall assure the best possible use of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE efficiently.

§ 109–1.5103 Loan of personal property.

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement or computer generated equivalent when approved in writing by the OPMO or on-site DOE property administrator. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Deputy Assistant Secretary for International Energy Policy, Trade and Investment for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5104 Borrowing of personal property.

(a) DOE organizations and designated contractors are encouraged to borrow personal property within DOE to further DOE programs. Property classified as Equipment Held For Future Projects (EHFFP) or as In Standby should be reviewed by those receiving availability inquiries for short-term use (one year or less). Borrowing of Government personal property from other Federal agencies is also encouraged when required for short periods of time. Such transactions shall be covered by written agreements which include all terms of the transaction.

(b) In determining whether it is practical and economical to borrow personal property, consideration shall be given to suitability, condition, value, extent and nature of use, extent of availability, portability, cost of transportation, and other similar factors.

(c) Adequate records and controls shall be established and maintained for borrowed property to ensure its proper control and prompt return to the lender.

§ 109–1.5105 Identification marking of personal property.

(a) Personal property shall be marked ''U.S. Government property'' (if marking space is limited, property may be marked ''U.S. DOE'') subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(1) Equipment and sensitive items shall be marked ''U.S. Government property'' and numbered for control purposes.

(2) Administratively controlled property and other personal property susceptible to unauthorized personal use should be marked ''U.S. Government property'' and numbered for control purposes.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or, if removal is impractical, additional permanent markings must be added to indicate such disposal.

§ 109–1.5106 Segregation of personal property.

Ordinarily, contractor-owned personal property shall be segregated from Government personal property. Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (i.e., segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (i.e., the Government property is specifically marked or otherwise identified as Government property).

§ 109–1.5107 Physical protection of personal property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

§ 109–1.5108 Personal property records requirements.

The contractor's property control records shall provide the following basic information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name, model and serial number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

§ 109–1.5108–1 Equipment.

An individual property record will be developed and maintained for each item of equipment.

§ 109–1.5108–2 Sensitive items.

Individual item records will be maintained for each sensitive item. Minimum dollar value thresholds for controlling sensitive items, if used, will be determined by the OPMO for each DOE organization in consultation with appropriate management officials. This threshold may be applied organization-wide or by individual contractors or location. Identification of types of property meeting the DOE-PMR definition of sensitive property should be the primary determinant of sensitive category, with dollar thresholds, if any,

considered as a guideline only. Sensitive items which are also equipment will be controlled as both sensitive items and equipment.

§ 109–1.5108–3 Stores inventories.

Perpetual inventory records are to be maintained for stores inventory items.

§ 109–1.5108–4 Precious metals.

Perpetual inventory records are to be maintained for precious metals.

§ 109–1.5108–5 Administratively controlled items.

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/marking, or other locally established control techniques.

§ 109–1.5109 Control of sensitive items.

(a) A list of types of personal property considered to be sensitive shall be developed and maintained by each DOE activity/site, taking into consideration value, costs of administration, need for control, and other factors that management determines should apply.

(b) Items of equipment which are also designated as sensitive items will be controlled as sensitive items and as equipment.

(c) Written procedures shall be established for control of sensitive items and shall address:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level;

(2) Establishment of controls in the central receiving and warehousing department, such as extraordinary physical protection, handling, and maintenance of a current listing of sensitive items;

(3) Establishment and maintenance of appropriate records;

(4) Requirement for tagging and identification;

(5) Use of memorandum receipts or custody documents at time of assignment or change in custody;

(6) Establishment of custodial responsibilities describing:

(i) Need for extraordinary physical protection;

(ii) Requirement for efficient physical and administrative control of sensitive items assigned for general use within an organizational unit as appropriate to the type of property and the circumstances;

(iii) Requirement for prompt reporting and investigation of loss, damage or destruction; and

(iv) Requirement for promptly reporting changes in custody.

(7) Requirement for periodic physical inventories (see § 109–1.5110 of this part).

(8) Requirement for an employee transfer or termination check-out procedure and examination and adjustment of records;

(9) Reminder of prohibition of use for other than official purposes and penalties for misuse;

(10) A clear statement of the extent of responsibility for financial accountability depending upon contractor policy; and

(11) Other procedures which have demonstrated efficient physical and administrative control over sensitive items.

§ 109–1.5110 Physical inventories of personal property.

(a) Physical inventories of those categories of personal property as specified in paragraph (f) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(f) The frequency of physical inventories of personal property shall be as follows:

(1) Equipment—biennial.

(2) Sensitive items—annual (see paragraph 109–1.5110(l) of this section).

(3) Stores inventories—annual.

(4) Precious metals—annual.

(5) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs should determine such requirements based on management needs.

(g) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control.

(h) Physical inventories of equipment may be conducted by the ''inventory by exception'' method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO.

(i) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(j) The results of physical inventories shall be reported to the OPMO within 30 days after the reconciliation required above.

(k) Physical inventories of equipment and stores inventories may be conducted using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

(l) Physical inventories of sensitive items (excluding arms, ammunition, and military property) having an acquisition cost of $2,000 or less may also be conducted using statistical sampling methods. However if statistical sampling methods are used, a wall-to-wall inventory is required no less frequently than every three years and at contract completion (unless there is a follow-on contract with the same contractor).

§ 109–1.5111 Retirement of property.

When Government property is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair, it shall be listed on a retirement work order. A full explanation shall be supported by an investigation, if necessary, as to the date and circumstances surrounding the wear, loss, theft, destruction, abandonment, or damage. The retirement work order shall be signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory level above the official initiating the report.

§ 109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

§ 109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

(1) The contractor's name and contract number;

(2) A description of the property;

(3) Cost of the property, and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin; and

(5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability with a copy of the determination furnished to the contractor and the property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably assuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

§ 109–1.5114 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

§ 109–1.5148 Personal property management reports.

Reports to be submitted to the DPMO are listed in Table 1:

TABLE 1

Report title	Due at DOE headquarters	References	Form No.
(1) Report of Exempted Motor Vehicles	On request	FPMR 101–38.204–4, DOE–PMR 109–38.204–4.	Letter.
(2) Agency Report of Motor Vehicle Data	Oct. 31	FPMR 101–38.903, DOE–PMR 109–38.903.	SF 82.
(3) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(4) Negotiated Sales	Nov. 15	FPMR 101–45.4702, DOE–PMR 109–45.4702.	Letter.

Subpart 109–1.52—Personal Property Management Program for Designated Contractors

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

§ 109–1.5201 Policy.

(a) Designated contractors shall establish, implement, and maintain a system that provides for an efficient personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed and approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain efficient systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

§ 109–1.5202 Establishment of a personal property holdings baseline.

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

§ 109–1.5203 Management of subcontractor-held personal property.

Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(a) Adequate records.

(b) Controls over acquisitions.

(c) Identification as Government-owned personal property.

(d) Physical inventories.

(e) Proper care, maintenance, and protection.

(f) Controls over personal property requiring special handling (i.e., nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(g) Reporting, redistribution, and disposal of excess and surplus personal property.

(h) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(i) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(j) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

§ 109–1.5204 Review and approval of a designated contractor's personal property management system.

(a) An initial review of a designated contractor's personal property management system shall be performed by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the ''within one year'' initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the ''within one year'' initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing by the head of the field organization with advice of the contracting officer, property administrator, OPMO, legal counsel, DPMO, and appropriate program officials. Approval authority may be redelegated to the contracting officer or contracting officer's designee. Conditional approval and disapproval authority cannot be redelegated. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator

that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

§ 109–1.5205 Personal property management system changes.

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

Subpart 109–1.53—Management of High Risk Personal Property

§ 109–1.5300 Scope of subpart.

(a) This subpart provides identification, accounting, control, and disposal policy guidance for the following categories of high risk personal property: especially designed or prepared property, export controlled property, nuclear weapon components or weapon-like components, and proliferation sensitive property. The guidance is intended to ensure that the disposition of these categories of high risk personal property does not adversely affect the national security or nuclear nonproliferation objectives of the United States.

(b) The other categories of high risk personal property are controlled by other life cycle management programs and procedures monitored by other Departmental elements.

§ 109–1.5301 Applicability.

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high risk personal property control requirements in this subpart as guidance, heads of field organizations or OPMOs shall assure that designated contractors and financial assistance recipients are responsible for developing a cost effective high risk property management system, covering all operational responsibilities enumerated in this subpart.

§ 109–1.5302 Policies.

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk personal property in an efficient manner. High risk personal property will be managed throughout its life cycle so as to protect public and DOE personnel safety and to advance the national security and the nuclear nonproliferation objectives of the U.S. Government.

(b) The disposition of high risk property is subject to special considerations. Items of high risk property may present significant risks to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. Organizations will identify high risk property and control its disposition to eliminate or mitigate such risks. In no case shall property be transferred or disposed unless it receives a high risk assessment and is handled accordingly.

§ 109–1.5303 Procedures.

(a) *Identification, marking and control.* To ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, property should be assessed and evaluated as high risk property as early in its life cycle as practical.

(1) Newly acquired high risk personal property shall be identified and tracked during the acquisition process and marked upon receipt.

(2) All personal property shall be reviewed for high risk identification, marking, and database entry during

regularly scheduled physical inventories, unless access to the property is difficult or impractical because the property is a component of a larger assembly, a complex operating system, or an older facility. The review of this property will be completed, prior to disposition, when replacing components or when operating systems and facilities are decommissioned and dismantling.

(3) High risk personal property which by its nature cannot be marked, such as stores items and metal stock, is exempt from this requirement. However, personal property management programs should contain documentation on the characterization of this property as high risk.

(b) *Disposition of high risk property.* (1) Prior to disposition, all personal property, materials or data will be assessed to determine:

(i) Whether it should be characterized as high risk and

(ii) What actions are necessary to ensure compliance with applicable national security or nonproliferation controls.

(2) The DOE or designated contractor property management organization may not process high risk personal property into a reutilization/disposal program without performing the reviews prescribed by the local high risk property management system. The reviews must be properly documented, and all appropriate certifications and clearances received, in accordance with the approved site or facility personal property management program.

(3) The disposition (including demilitarization of items on the Munitions List) and handling of high risk personal property are subject to applicable provisions of Subchapter H of the FPMR, subchapter H of this chapter, and the DOE Guidelines on Export Control and Nonproliferation.

(4) *Documentation.* All applicable documentation, including records concerning the property's categorization as high risk, shall be included as part of the property transfer. The documentation shall be included with all transfers within, or external to, DOE.

(5) Unless an alternative disposition option appears to be in the best interest of the Government, surplus Trigger List components, equipment, and materials and nuclear weapon components shall either be sold for scrap after being rendered useless for their originally intended purpose or destroyed, with the destruction verified and documented. Requests for approval of an alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(6) *Export Restriction Notice.* The following Export Restriction Notice, or approved equivalent notice, shall be included in all transfers, sales, or other offerings:

EXPORT RESTRICTION NOTICE

The use, disposition, export and reexport of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 (560 U.S.C. Append 2401 *et seq.*); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 *et seq.*); Export Administration Regulations (15 CFR part 730 *et seq.*); Foreign Assets Control Regulations (31 CFR parts 500 *et seq.*); and the Espionage Act (37 U.S.C. 791 *et seq.*) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or reexport of the property; and

b. Any use or disposition, export or reexport of the property which is not authorized in accordance with the provisions of this agreement.

§ 109–1.5304 Deviations.

(a) Life cycle control determinations. When the HFO approves a contractor program containing controls, other than life cycle control consistent with this subpart, the decision shall be justified in writing and a copy sent to the Deputy Assistant Secretary for Procurement and Assistance Management. A HFO's decision not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(b) Certain transfers, sales, or other offerings of high risk personal property may require special conditions or specific restrictions as determined necessary by the property custodian or cognizant program office.

(c) Requests for deviations from the requirements of this subpart may be made through the cognizant HFO to the Deputy Assistant Secretary for Procurement and Assistance Management.

PART 109–6—MISCELLANEOUS REGULATIONS

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

Sec.
109–6.400 Scope and applicability.
109–6.400–50 Instructions to DOE passenger carrier operators.
109–6.402 Policy.
109–6.450 Statutory provisions.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

SOURCE: 63 FR 19624, Apr. 20, 1998, unless otherwise noted.

Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

§ 109–6.400 Scope and applicability.

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR 101–6.4 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844).

§ 109–6.400–50 Instructions to DOE passenger carrier operators.

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit cards;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

§ 109–6.402 Policy.

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes or for incidental

purposes as prescribed in this section. Official use does not include use of vehicles between residence and place of employment unless provided for in accordance with paragraph (b) of this section. The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR 101–6.4 and this subpart.

(b) The use of Government motor vehicles between an employee's residence and place of employment (home-to-work) is limited to:

(1) The Secretary of Energy; and

(2) Those persons engaged in field work as determined by the Secretary of Energy in accordance with 41 CFR 101–6.403(b).

(c) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 101–6.402(f).

(d) A Departmental official who is authorized home-to-work transportation is permitted to use Government-owned or leased motor vehicles for non-official purposes incidental to the official use of the vehicle, provided that the incremental cost (e.g., driver time and mileage) of such use is *de minimis* or such costs are outweighed by other considerations, such as the efficient use of the official's time.

§ 109–6.450 Statutory provisions.

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

SUBCHAPTERS B–D [RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Subpart 109–25.1—General Policies

Sec.
109–25.100 Use of Government personal property and nonpersonal services.
109–25.103 Promotional materials, trading stamps, or bonus goods.
109–25.103–1 General.
109–25.104 Acquisition of office furniture and office machines.
109–25–109 Laboratory and research equipment.
109–25–109–1 Identification of idle equipment.
109–25–109–2 Equipment pools.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings, and equipment.
109–25.350 Furnishing of Government clothing and individual equipment.

Subpart 109–25.4—Replacement Standards

109–25.401 General.
109–25.401–50 Replacement approvals.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 63 FR 19625, Apr. 20, 1998, unless otherwise noted.

Subpart 109–25.1—General Policies

§ 109–25.100 Use of Government personal property and nonpersonal services.

The Director, Office of Administrative Services and heads of field organizations shall ensure to restrict the use of Government property/services to officially designated activities.

§ 109–25.103 Promotional materials, trading stamps, or bonus goods.

§ 109–25.103–1 General.

DOE offices and designated contractors shall establish procedures for the receipt and disposition of promotional materials, trading stamps, or bonus goods consistent with the provisions of 41 CFR 101–25.103.

§ 109–25.104 Acquisition of office furniture and office machines.

DOE offices and designated contractors shall make the determination as to whether requirements can be met through the utilization of DOE owned furniture and office machines.

§ 109–25.109 Laboratory and research equipment.

The provisions of 41 CFR 101–25.109 and this section apply to laboratory and research equipment in the possession of DOE field organizations and designated contractors.

§ 109–25.109–1 Identification of idle equipment.

(a) At a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The submission to the head of the laboratory or facility of a report of walk-throughs conducted shall be at the discretion of the laboratory or facility management. However, DOE field organizations may require designated contractors to submit a report of walk-throughs to the OPMOs. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools, or excessed, as appropriate. All walk-throughs shall be documented to include, at a minimum, the identity of the participants, areas covered, findings, recommendations, corrective action plans, and results achieved. The documentation shall be made available for review by appropriate contractor management, DOE offices, and audit teams.

(b) Members of management walk-through inspection teams should be coordinated with the property administrator and the OPMO.

(c) OPMOs shall periodically review walk-through procedures and practices of DOE offices and designated contractors to determine their effectiveness.

§ 109–25.109–2 Equipment pools.

(a)–(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Heads of field organizations shall require periodic independent reviews of equipment pool operations.

Subpart 109–25.3—Use Standards

§ 109–25.302 Office furniture, furnishings, and equipment.

The Director, Office of Administrative Services, heads of field organizations, and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

§ 109–25.350 Furnishing of Government clothing and individual equipment.

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or

(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, as amended.

Subpart 109–25.4—Replacement Standards

§ 109–25.401 General.

§ 109–25.401–50 Replacement approvals.

The Director, Office of Administrative Services and heads of field organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment.

PART 109–26—PROCUREMENT SOURCES AND PROGRAM

Subpart 109–26.2—Federal Requisitioning System

Sec.
109–26.203 Activity address codes.

Subpart 109–26.5—GSA Procurement Programs

109–26.501 Purchase of new motor vehicles.
109–26.501–1 General.
109–26.501–4 Submission of orders.
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.
109–26.501–51 Used vehicles.
109–26.501–52 Justification for purchase.
109–26.501–53 Acquisitions by transfer.
109–26.501–54 Communications equipment.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 63 FR 19626, Apr. 20, 1998, unless otherwise noted.

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

(a) DOE field organizations designated by OCMA are responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and

(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) OCMA is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and

(2) Furnishing the identity of the lead field organization points of contact to GSA.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

§ 109–26.501–1 General.

(a) [Reserved]

(b) Motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the DPMO. However, where GSA refuses to grant a waiver and it is believed that procurement through GSA would adversely affect or otherwise impair a program, the DPMO may, upon written request of the head of the DOE field organization, grant the authority for direct purchase of general purpose motor vehicles. Upon receipt of written authorization from the DPMO, the head of the field organization may authorize direct purchase of special purpose vehicles. The purchase price for passenger motor vehicles shall not exceed any statutory limitation in effect at the time the purchase is made.

§ 109–26.501–4 Submission of orders.

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the DPMO, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

§ 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the DPMO.

(c) To assure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Deputy Assistant Secretary for Procurement and Assistance Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

§ 109–26.501–51 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Director, Office of Administrative Services and heads of field organizations may authorize the purchase of used motor vehicles where justified by special circumstances, e.g., when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

§ 109–26.501–52 Justification for purchase.

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact

on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

§ 109–26.501–53 Acquisitions by transfer.

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

§ 109–26.501–54 Communications equipment.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.

109–27.000–50 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102 Economic order quantity principle.
109–27.102–1 Applicability.
109–27.102–50 Systems contracting.
109–27.102–51 Policy.
109–27.102–52 Implementation.

Subpart 109–27.2—Management of Shelf-Life Materials

109–27.202 Applicability.

Subpart 109–27.3—Maximizing Use of Inventories

109–27.302 Applicability.

Subpart 109–27.4—Elimination of Items From Inventory

109–27.402 Applicability.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

109–27.5001 Objectives.
109–27.5002 Stores inventory turnover ratio.
109–27.5003 Stock control.
109–27.5004 Sub-stores.
109–27.5005 Shop, bench, cupboard or site stock.
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109–27.5007 Physical inventories.
109–27.5007–1 Procedures.
109–27.5007–2 Inventory adjustments.
109–27.5008 Control of drug substances and potable alcohol.
109–27.5009 Control of hypodermic needles and syringes.
109–27.5010 Containers returnable to vendors.
109–27.5011 Identification marking of metals and metal products.
109–27.5011–1 General.
109–27.5011–2 Exception.

Subpart 109–27.51—Management of Precious Metals

109–27.5100 Scope of subpart.
109–27.5101 Definition.
109–27.5102 Policy.
109–27.5103 Precious Metals Control Officer.

109–27.5104 Practices and procedures.
109–27.5104–1 Acquisitions.
109–27.5104–2 Physical protection and storage.
109–27.5104–3 Perpetual inventory records.
109–27.5104–4 Physical inventories.
109–27.5104–5 Control and issue of stock.
109–27.5104–6 Control by using organization.
109–27.5105 Management reviews and audits.
109–27.5106 Precious metals pool.
109–27.5106–1 Purpose.
109–27.5106–2 Withdrawals.
109–27.5106–3 Returns.
109–27.5106–4 Withdrawals/returns forecasts.
109–27.5106–5 Assistance.
109–27.5107 Recovery of silver from used hypo solution and scrap film.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 63 FR 19627, Apr. 20, 1998, unless otherwise noted.

§ 109–27.000–50 Definitions.

As used in this part the following definitions apply:

Inventories mean stocks of stores, construction, supplies, and parts used in support of DOE programs.

Inventory management means the efficient use of methods, procedures and techniques for recording, analyzing, and adjusting inventories in accordance with established policy. The following related functions are included:

(1) Providing adequate protection against misuse, theft, and misappropriation.

(2) Providing accurate analyses of quantities to determine requirements so that only minimal obsolescence losses will be encountered, while ensuring adequate inventory levels to meet program schedules.

(3) Providing adequate and accessible storage facilities and services based upon analyses of program requirements so that a minimum and economical amount of time is required to service the program.

Stock record means a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory.

Sub-store means a geographically removed part of the main store's operation conducted as a subordinate element of it and subject to the same management policies and inventory controls.

Systems contracting means a materials management purchasing technique for the purchase of general, common-use, and repetitive supply items in a particular product family. An example is office supplies, purchased from a commercial vendor, that are needed for immediate use instead of purchasing in bulk for future use, storing in warehouses, and issuing to customers by use of a requisitioning system. Systems contracting and just-in-time contracting are synonymous.

Subpart 109–27.1—Stock Replenishment

§ 109–27.102 Economic order quantity principle.

§ 109–27.102–1 Applicability.

Replenishment of inventories of stock items having recurring demands will be by use of the economic order quantity (EOQ) principle. However, when considered more suitable, designated contractors may use other generally accepted approaches to EOQ.

§ 109–27.102–50 Systems contracting.

Systems contracting may be used instead of or along with EOQ once a determination is made that such a system is feasible and cost effective, and that adequate controls are in place to ensure proper use.

§ 109–27.102–51 Policy.

Systems contracting for supply operations is a proven cost-effective approach to meeting procurement needs and may be implemented in DOE offices and designated contractors wherever significant cost savings to the Government will result. Impacts on local suppliers and small and disadvantaged business concerns should be considered in the overall business strategy.

§ 109–27.102–52 Implementation.

(a) DOE OPMOs shall establish required property management controls relative to the implementation of systems contracting.

(b) DOE offices and designated contractors operating a materials management function who have not performed an initial feasibility study for the implementation of systems contracting shall perform such a study for selected

commodity groups. The study may be accomplished over a period of time, until all commodity groups have been considered. The study should address functional requirements, activity levels of commodity groups and individual items, and potential impacts on local suppliers and small and disadvantaged businesses. An industrial relations analysis on existing labor relations and union contracts may also be necessary.

(c) As required in the DEAR, DOE offices and designated contractors are required to consider the use of GSA supply sources when economically advantageous to the Government. These sources must be considered in the conduct of the feasibility study.

(d) DOE contracting offices shall evaluate the initial cost benefit studies performed by contractors to verify the savings and other benefits of systems contracting, and shall approve its implementation. In those instances where a cost benefit study has previously been performed, the DOE contracting office shall ensure that those studies have been evaluated and the approval to proceed with systems contracting has been provided to the contractor in writing.

(e) DOE offices shall periodically reevaluate systems contracting operations conducted by their office and designated contractors to ensure that required property management controls are being followed.

Subpart 109–27.2—Management of Shelf-Life Materials

§ 109–27.202 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to the management of shelf-life materials.

Subpart 109–27.3—Maximizing Use of Inventories

§ 109–27.302 Applicability.

When considered more suitable, designated contractors may use other generally accepted approaches to maximizing use of inventories.

Subpart 109–27.4—Elimination of Items From Inventory

§ 109–27.402 Applicability

When considered more suitable, designated contractors may use other generally accepted approaches to determine which items should be eliminated from inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with DOE requirements, applicable laws and regulations, and the following objectives:

(a) The maintenance of adequate stock levels through accurate analyses of quantities to determine requirements and stock replenishments so that only minimal obsolescence losses will be encountered while ensuring adequate inventory levels to meet program schedules;

(b) The protection of materials against misuse, theft, and misappropriation;

(c) The maintenance of an efficient operation; and

(d) The standardization of inventories to the greatest extent practicable.

§ 109–27.5002 Stores inventory turnover ratio.

Comparison of investment in stores inventories to annual issues shall be made to assure that minimum inventories are maintained for the support of programs. This comparison may be expressed either as a turnover ratio (dollar value of issues divided by dollar value of inventory) or in the average number of month's supply on hand. Turnover or number of month's supply is calculated only on current-use inventory. Performance goals, i.e., a six months investment or a turnover ratio of 2.0, shall be established for each stores using activity. It is recognized, however, that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5003 Stock control.

(a) Stock control shall be maintained on the basis of stock record accounts of inventories on hand, on order, received, issued, and disposed of, and supported by proper documents in evidence of these transactions. Stock record accounts shall be available for review and inspection.

(b) Personal property under stock control for greater than 90 days shall be maintained in stock record accounts.

§ 109–27.5004 Sub-stores.

(a) Sub-stores shall be established when necessary to expedite delivery of materials and supplies to the users, serve emergencies, provide economy in transportation, reduce shop and site stocks, and enable stores personnel to provide assistance in obtaining materials and supplies as needed.

(b) Items stored for issue in the sub-stores shall be treated as inventory items for control and reporting purposes. Stock records shall be integrated with central stock records so that the total amount on hand of any item at all locations is known.

§ 109–27.5005 Shop, bench, cupboard or site stock.

Shop, bench, cupboard or site stocks are an accumulation of small inventories of fast-moving materials at the point of use. Normally, these inventories are expensed at time of issue from controlled stores. However, when stocks of such inventories are not consumed or do not turn over in a reasonable period of time, which normally should not exceed 90 days, these items should be subject to the required physical controls and recorded in the proper inventory account.

§ 109–27.5006 Stores catalogs.

A stores catalog for customer use that lists items available from stock shall be established for each stores operation. Exceptions to this requirement are authorized where establishment of a catalog is impracticable or uneconomical because of small total value or number of items involved, or temporary need for the facility.

§ 109–27.5007 Physical inventories.

§ 109–27.5007–1 Procedures.

The following procedures shall be established for taking physical inventory of stocks subjected to quantity controls as well as those under financial control:

(a) Completion of a physical inventory not less frequently than every twelve months.

(b) Reconciliation of inventory quantities with the stock records.

(c) Preparation of a report of the physical inventory results.

§ 109–27.5007–2 Inventory adjustments.

Discrepancies between physical inventories and stock records shall be adjusted and the supporting adjustment records shall be reviewed and approved by a responsible official at least one supervisory level above the supervisor in charge of the warehouse or storage facility. Items on an adjustment report which are not within reasonable tolerances for particular items shall be thoroughly investigated before report approval. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5008 Control of drug substances and potable alcohol.

Effective procedures and practices shall provide for the management and physical security of controlled substances and potable alcohol from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations. Controls and records of potable alcohol shall be maintained on quantities of one quart and above.

§ 109–27.5009 Control of hypodermic needles and syringes.

Effective procedures and practices shall provide for the management and physical security of hypodermic needles and syringes to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the items useless prior to disposal.

§ 109–27.5010 Containers returnable to vendors.

Containers furnished by vendors shall be administratively and physically controlled before and after issuance. Prompt action shall be taken to return such containers to vendors for credit after they have served their intended use.

§ 109–27.5011 Identification marking of metals and metal products.

§ 109–27.5011–1 General.

Metals and metal products shall be identified and marked in accordance with applicable Federal standards. This requirement applies to direct charges as well as to items procured for store, shop or floor stock, or for use on construction projects. Additional markings not covered by Federal standards should be used to show special properties, corrosion data, or test data as required. The preferred process is for the marking to be done in the manufacturing process, but it may be applied by suppliers when circumstances warrant.

§ 109–27.5011–2 Exception.

Exceptions to the marking requirement may be made when:

(a) It is necessary to procure small quantities from suppliers not equipped to do the marking;

(b) It would delay delivery of emergency orders; or

(c) Procurement is from DOE or other Federal agency excess.

Subpart 109–27.51—Management of Precious Metals

§ 109–27.5100 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

§ 109–27.5101 Definition.

Precious metals means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

§ 109–27.5102 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

§ 109–27.5103 Precious Metals Control Officer.

Each DOE organization and contractor holding precious metals shall designate in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Assuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining of an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Insuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting to the Business Center for Precious Metals Sales and Recovery the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and § 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

§ 109–27.5104 Practices and procedures.

§ 109–27.5104–1 Acquisitions.

DOE organizations and contractors shall contact the Business Center for Precious Metals Sales and Recovery to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5104–2 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109–27.5104–3 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of DOE Order 534.1, Accounting.

§ 109–27.5104–4 Physical inventories.

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by metal content and percent of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

§ 109–27.5104–5 Control and issue of stock.

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with efficient support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

§ 109–27.5104–6 Control by using organization.

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by

the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

(e) Employee termination and transfer procedures shall include clearance for precious metals possession.

§ 109–27.5105 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

§ 109–27.5106 Precious metals pool.

§ 109–27.5106–1 Purpose.

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the disposal process specified in subchapter H of the FPMR and this regulation.

§ 109–27.5106–2 Withdrawals.

Pure metals, parts, fabricated products, catalysts, or solutions, are generally available and the Business Center for Precious Metals Sales and Recovery can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109–27.5106–3 Returns.

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. With the exception of silver, this includes precious metals in any form, including shapes, scrap, or radioactively contaminated. Only high grade nonradioactively contaminated silver should be included. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

§ 109–27.5106–4 Withdrawals/returns forecasts.

The Business Center for Precious Metals Sales and Recovery will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109–27.5106–5 Assistance.

The Business Center for Precious Metals Sales and Recovery operates the precious metals pool. DOE organizations and contractors may obtain specific information regarding the operation of the precious metals pool (operating contractor's name, address, and telephone number; processing charges; etc.) by contacting the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109–27.5107 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

PART 109–28—STORAGE AND DISTRIBUTION

Sec.

109–28.000–50 Policy.
109–28.000–51 Storage guidelines.

Subpart 109–28.3—Customer Supply Centers

109–28.306 Customer supply center (CSC) accounts and related controls.
109–28.306–3 Limitations on use.
109–28.306–5 Safeguards.

Subpart 109–28.50—Management of Equipment Held for Future Projects

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109–28.5001 Definition.
109–28.5002 Objective.
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109–28.5005 EHFFP program review.
109–28.5006 Utilization.

Subpart 109–28.51—Management of Spare Equipment

109–28.5100 Scope of subpart.
109–28.5101 Definition.
109–28.5102 Exclusions.
109–28.5103 Management policy.

AUTHORITY: 42 U.S.C. 7254.

SOURCE: 63 FR 19630, Apr. 20, 1998, unless otherwise noted.

§ 109–28.000–50 Policy.

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

§ 109–28.000–51 Storage guidelines.

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and health officials.

(f) Unless inappropriate or impractical until declared excess, nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal property, but stored separately in accordance with instructions from the cognizant program office.

Subpart 109–28.3—Customer Supply Centers

§ 109–28.306 Customer supply center (CSC) accounts and related controls.

§ 109–28.306–3 Limitations on use.

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

§ 109–28.306–5 Safeguards.

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

Subpart 109–28.50—Management of Equipment Held for Future Projects

§ 109–28.5000 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects (EHFFP).

§ 109–28.5001 Definition.

Equipment held for future projects means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

§ 109–28.5002 Objective.

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

§ 109–28.5003 Records.

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

§ 109–28.5004 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed by management at a level above that of the individual making the initial determination.

(c) Retention of equipment as EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) When equipment is retained as EHFFP for longer than one year, the annual rejustification shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. Equipment retained as EHFFP for longer than three years should be approved by the head of the DOE field organization.

§ 109–28.5005 EHFFP program review.

OPMOs or on-site DOE property administrators shall conduct periodic reviews to ensure that the EHFFP program is being conducted in accordance with established procedures and this subpart. Included in the review will be proper determinations of property as EHFFP, the validity of justifications for retaining EHFFP, and the inclusion of EHFFP in management walkthroughs as prescribed in § 109–25.109–1 of this chapter.

§ 109–28.5006 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

Subpart 109–28.51—Management of Spare Equipment

§ 109–28.5100 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–28.5101 Definition.

Spare equipment means items held as replacement spares for equipment in current use in DOE programs.

§ 109–28.5102 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment installed for emergency backup, e.g., an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

§ 109–28.5103 Management policy.

(a) Procedures shall require the maintenance of records for spare equipment, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment as excess property.

PART 109–30—FEDERAL CATALOG SYSTEM

AUTHORITY: 42 U.S.C. 7254.

SOURCE: 63 FR 19632, Apr. 20, 1998, unless otherwise noted.

§ 109–30.001–50 Applicability.

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

SUBCHAPTER F [RESERVED]

SUBCHAPTER G—AVIATION, TRANSPORTATION, AND MOTOR VEHICLES

PART 109–37 [RESERVED]

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

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109–38.001 Definitions.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

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Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

109–38.800 General.
109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

109–38.902 Records.
109–38.903 Reporting of data.
109–38.903–50 Reporting DOE motor vehicle data.

Subpart 109–38.51—Utilization of Motor Equipment

109–38.5100 Scope of subpart.
109–38.5101 Policy.
109–38.5102 Utilization controls and practices.
109–38.5103 Motor vehicle utilization standards.
109–38.5104 Other motor equipment utilization standards.
109–38.5105 Motor vehicle local use objectives.
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Subpart 109–38.52—Watercraft

109–38.5200 Scope of subpart.

109–38.5201 Definition.
109–38.5202 Watercraft operations.
109–38.5203 Watercraft identification and numbers.

AUTHORITY: 42 U.S.C. 7254.

SOURCE: 63 FR 19632, Apr. 20, 1998, unless otherwise noted.

§ 109–38.000 Scope of part.

109–38.000–50 Policy.

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most efficient manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

Subpart 109–38.0—Definition of Terms

§ 109–38.001 Definitions.

Experimental vehicles means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

Motor equipment means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

Motor vehicle means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

Special purpose vehicles means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and fire fighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles, motor scooters and all terrain vehicles will also be reported as special purpose vehicles.

Subpart 109–38.1—Fuel Efficient Motor Vehicles

§ 109–38.104 Fuel efficient passenger automobiles and light trucks.

(a) [Reserved]

(b) All requests to purchase passenger automobiles larger than class IA, IB, or II (small, subcompact, or compact) shall be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 101–38.104.

(1)–(4) [Reserved]

(5) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the DPMO for approval.

§ 109–38.105 Agency purchase and lease of motor vehicles.

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the DPMO for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

Subpart 109–38.2—Registration, Identification, and Exemptions

§ 109–38.200 General requirements.

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 101–38.200(f) for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with § 109–

38.204–1 of this subpart, shall be submitted through normal administrative channels to the DPMO for approval. Each approved exemption must be renewed annually, and the DPMO shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 101–38.200(f) will be transmitted to GSA by the DPMO.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

§ 109–38.201 Registration and inspection.

§ 109–38.201–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

§ 109–38.202 Tags.

§ 109–38.202–2 Outside the District of Columbia.

The Director of Administrative Services and heads of field organizations shall make the determination concerning the use of tags outside the District of Columbia.

§ 109–38.202–3 Records.

(a) The DPMO assigns ''blocks'' of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional ''blocks'' will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

§ 109–38.202–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

§ 109–38.203 Agency identification.

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, ''Requisition for Supplies, Equipment or Services'', or as directed by that office.

§ 109–38.204 Exemptions.

§ 109–38.204–1 Unlimited exemptions.

(a)–(f) [Reserved]

(g) The Director, Office of Administrative Services and heads of field organizations for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

§ 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each representative authorized to approve such requests to the District of Columbia Department of Transportation.

§ 109–38.204–4 Report of exempted motor vehicles.

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

§ 109–38.204–50 Records of exempted motor vehicles.

The Director, Office of Administrative Services and heads of field organizations shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

Subpart 109–38.3—Official Use of Government Motor Vehicles

§ 109–38.300 Scope.

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

§ 109–38.301 Authorized use.

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 101–6.4 and section 109–6.4 of this chapter.

§ 109–38.301–1 Contractors' use.

Heads of field organizations shall ensure that provisions of the FPMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

§ 109–38.301–1.50 Authorization for transportation between residence and place of employment.

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by designated contractor personnel except under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract include: use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Assistant Manager for Administration at the Operations Offices or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

§ 109–38.301–1.51 Emergency use.

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or

property. Such use shall be documented and the documentation retained for three years.

§ 109–38.301–1.52 Maintenance of records.

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

§ 109–38.301–1.53 Responsibilities of motor vehicle operators.

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

Subpart 109–38.4—Use and Replacement Standards

§ 109–38.401 Use standards.

§ 109–38.401–2 Use of self-service pumps.

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

§ 109–38.402 Replacement standards.

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 101–38.402 only after certification by the Director of Administrative Services or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§ 109–38.402–50 Prompt disposal of replaced motor vehicles.

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

§ 109–38.403 Responsibility for damages.

§ 109–38.403–1 Policy.

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

§ 109–38.403–2 Responsibility.

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions; or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided there is a clear, flagrant, and documented pattern of such occurrences.

§ 109–38.403–3 Exceptions.

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As the result of the negligent or willful act of a party other than the organization or it's employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof of the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

Subpart 109–38.5—Scheduled Maintenance

§ 109–38.502 Guidelines.

§ 109–38.502–50 DOE guidelines.

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d) *Warranties.* (1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

§ 109–38.701 Transfer of title for Government-owned motor vehicles.

§ 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Administrative Services and heads of field organizations for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

Subpart 109–38.8—Standard Form 149, U.S. Government National Credit Card

§ 109–38.800 General.

(a)–(c) [Reserved]

(d) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event an SF 149 or SF 149A is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notification to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

(5) Being on the alert for any unauthorized bills.

§ 109–38.801 Obtaining SF 149, U.S. Government National Credit Card.

DOE offices electing to use national credit cards shall request the assignment of billing address code numbers from the DPMO. Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with the instructions provided by GSA.

Subpart 109–38.9—Federal Motor Vehicle Fleet Report

§ 109–38.902 Records.

The Director, Office of Administrative Services and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

§ 109–38.903 Reporting of data.

§ 109–38.903–50 Reporting DOE motor vehicle data.

(a) DOE offices and designated contractors operating DOE-owned or commercially-leased motor vehicles shall prepare the following reports using SF 82, Agency Report of Motor Vehicle Data or DOE approved equivalent, for the entire fleet including security vehicles.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Designated contractors shall submit the reports to the DOE contracting office for review and approval. DOE offices shall submit reports, including designated contractor reports, to the DPMO by November 15 of each year.

(c) Copies of the report forms may be obtained by contacting the DPMO.

(d) Personal computer generated reports are acceptable provided that the standard report format is followed.

Subpart 109–38.51—Utilization of Motor Equipment

§ 109–38.5100 Scope of subpart.

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

§ 109–38.5101 Policy.

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

§ 109–38.5102 Utilization controls and practices.

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.5103 Motor vehicle utilization standards.

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4×2's) and general purpose vehicles, one ton and under (less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

§ 109–38.5104 Other motor equipment utilization standards.

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

§ 109–38.5105 Motor vehicle local use objectives.

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

§ 109–38.5106 Application of motor vehicle use goals.

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

(1) Reassign the underutilized motor vehicles;

(2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

Subpart 109–38.52—Watercraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the efficient use and management of watercraft.

§ 109–38.5201 Definition.

As used in this subpart the following definition applies:

Watercraft means any vessel used to transport persons or material on water.

§ 109–38.5202 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109–38.5203 Watercraft identification and numbers.

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

Sec.
109–39.101 Notice of intention to begin a study.
109–39.101–1 Agency cooperation.
109–39.103 Agency appeals.
109–39.105 Discontinuance or curtailment of service.
109–39.105–2 Agency requests to withdraw participation.
109–39.106 Unlimited exemptions.
109–39.107 Limited exemptions.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

109–39.300 General.
109–39.301 Utilization guidelines.

AUTHORITY: 42 U.S.C. 7254.

SOURCE: 63 FR 19636, Apr. 20, 1998, unless otherwise noted.

Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

§ 109–39.101 Notice of intention to begin a study.

§ 109–39.101–1 Agency cooperation.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate representatives to coordinate with GSA concerning the

establishment of a GSA fleet management system to serve their organization.

§ 109–39.103 Agency appeals.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

§ 109–39.105 Discontinuance or curtailment of service.

§ 109–39.105–2 Agency requests to withdraw participation.

Should circumstances arise that would tend to justify discontinuance or curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

§ 109–39.106 Unlimited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the DPMO.

§ 109–39.107 Limited exemptions.

The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall seek limited exemptions from the fleet management system.

Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

§ 109–39.300 General.

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS) motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

§ 109–39.301 Utilization guidelines.

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Subpart 109–40.1—General Provisions

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109–40.000 Scope of part.
109–40.000–50 Applicability to contractors.
109–40.102 Representation before regulatory bodies.
109–40.103 Selection of carriers.
109–40.103–1 Domestic transportation.
109–40.103–2 Disqualification and suspension of carriers.
109–40.103–3 International transportation.
109–40.104 Use of Government-owned transportation equipment.
109–40.109 Utilization of special contracts and agreements.
109–40.110 Assistance to economically disadvantaged transportation businesses.
109–40.110–1 Small business assistance.
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109–40.112 Transportation factors in the location of Government facilities.
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Subpart 109–40.3—Traffic Management

109–40.301 Traffic management functions administration.
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109–40.304 Rate tenders to the Government.
109–40.305–50 Negotiations involving national security.
109–40.306–1 Recommended rate tender format.
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Subpart 109–40.50—Bills of Lading

109–40.5000 Scope of subpart.
109–40.5001 Policy.
109–40.5002 Applicability.
109–40.5003 Commercial bills of lading.
109–40.5004 Government bills of lading.
109–40.5005 Description of property for shipment.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

109–40.5100 Scope of subpart.
109–40.5101 Policy.

AUTHORITY: Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 486; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

SOURCE: 63 FR 19637, Apr. 20, 1998, unless otherwise noted.

Subpart 109–40.1—General Provision

§ 109–40.000 Scope of part.

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

§ 109–40.000–50 Applicability to contractors.

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

§ 109–40.102 Representation before regulatory bodies.

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

§ 109–40.103 Selection of carriers.

§ 109–40.103–1 Domestic transportation.

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.

§ 109–40.103–2 Disqualification and suspension of carriers.

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

§ 109–40.103–3 International transportation.

See 4 CFR 52.2 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

(a) U.S.-flag ocean carriers. Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

(b) U.S.-flag certificated air carriers. Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 1517), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that services by these carriers is available.

§ 109–40.105 Use of Government-owned transportation equipment.

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies and accomplish program objectives which cannot be attained through use of commercial carriers.

§ 109–40.109 Utilization of special contracts and agreements.

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

§ 109–40.110 Assistance to economically disadvantaged transportation businesses.

§ 109–40.110–1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

§ 109–40.110–2 Minority business enterprises.

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

§ 109–40.112 Transportation factors in the location of Government facilities.

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

§ 109–40.113 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

Subpart 109–40.3—Traffic Management

§ 109–40.301 Traffic management functions administration.

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

§ 109–40.302 Standard routing principle.

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

§ 109–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in ''turn around'' service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

§ 109–40.304 Rate tenders to the Government.

Under the provisions of section 10721 of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

§ 109–40.305–50 Negotiations involving national security.

Title 49 U.S.C., section 10721(b)(2) provides that rate tenders to the Government must be filed by the carriers within the Interstate Commerce Commission unless a carrier is advised by the U.S. Government that disclosure of a quotation or tender of a rate established * * * for transportation provided to the U.S. Government would endanger the National security. Carriers will be informed by the negotiating official if any quotation or tender to the Department of Energy involves such information.

§ 109–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format ''Uniform Tender of Rates and/or Charges for Transportation Services'' when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

§ 109–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

> Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number).

See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification, such as: ''Section 10721 tender, ABC Transportation Company, ICC No. 374.'' In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

§ 109–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

Subpart 109–40.50—Bills of Lading

§ 109–40.5000 Scope of subpart.

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

§ 109–40.5001 Policy.

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

§ 109–40.5002 Applicability.

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

§ 109–40.5003 Commercial bills of lading.

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor ''for the DOE.''

(d) Commercial bills of lading exceeding $10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

§ 109–40.5004 Government bills of lading.

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

§ 109–40.5005 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as ''Foamite'' or ''Formica,'' or general terms such as ''vehicles,'' ''furniture,'' or ''Government supplies,'' shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, parts 100–189.

Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

§ 109–40.5100 Scope of subpart.

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

§ 109–40.5101 Policy.

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

Sec.
109–42.1100.50 Scope of subpart.
109–42.1100.51 Policy.
109–42.1102–8 United States Munitions List items which require demilitarization.
109–42.1102–51 Suspect personal property.
109–42.1102–52 Low level contaminated personal property.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 63 FR 19640, Apr. 20, 1998, unless otherwise noted.

Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

§ 109–42.1100.50 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

§ 109–42.1100.51 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or apply, appropriate state and local regulations shall be followed.

§ 109–42.1102–8 United States Munitions List items which require demilitarization.

Heads of field organizations shall determine demilitarization requirements regarding combat material and military personal property using DoD 4160.21–M–1, Defense Demilitarization Manual as a guide.

§ 109–42.1102–51 Suspect personal property.

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size, construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

§ 109–42.1102–52 Low level contaminated personal property.

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this chapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.
§ 109–43.001 Definition.

Subpart 109–43.1—General Provisions

109–43.101 Agency utilization reviews.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.302 Agency responsibility.
109–43.302–50 Utilization by designated contractors.
109–43.304 Reporting requirements.
109–43.304–1 Reporting.
109–43.304–1.50 DOE reutilization screening.
109–43.304–1.51 Transfers within DOE.
109–43.304–2 Form and distribution of reports.
109–43.304–4 Property at installations due to be discontinued.
109–43.305 Property not required to be formally reported.
109–43.305–50 Nuclear-related and proliferation-sensitive personal property.
109–43.307 Items requiring special handling.
109–43.307–2 Hazardous materials.
109–43.307–2.50 Monitoring of hazardous personal property.
109–43.307–2.51 Holding hazardous personal property.
109–43.307–3 Conditional gifts for defense purposes.
109–43.307–4 Conditional gifts to reduce the public debt.
109–43.307–50 Export controlled personal property.
109–43.307–51 Classified personal property.
109–43.307–52 Nuclear-related or proliferation-sensitive personal property.
109–43.307–53 Automatic data processing equipment (ADPE).
109–43.307–54 Unsafe personal property.
109–43.312 Use of excess personal property on cost-reimbursement contracts.
109–43.313 Use of excess personal property on cooperative agreements.
109–43.314 Use of excess personal property on grants.
109–43.315 Certification of non-Federal agency screeners.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

109–43.502 Holding agency responsibilities.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

109–43.5000 Scope of subpart.
§ 109–43.5001 Definition.
109–43.5002 Reviews to determine need for retaining items.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 63 FR 19640, Apr. 20, 1998, unless otherwise noted.

§ 109–43.001 Definition.

DOE screening period means the period of time that reportable excess personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Energy-Related Laboratory Equipment (ERLE) Grant Program.

Subpart 109–43.1—General Provisions

§ 109–43.101 Agency utilization reviews.

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property that is excess to their needs and make it available for use elsewhere.

§ 109–43.103 Agency utilization officials.

The DPMO is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§ 109–43.302 Agency responsibility.

§ 109–43.302–50 Utilization by designated contractors.

Heads of field organizations may authorize designated contractors to perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

§ 109–43.304 Reporting requirements.

§ 109–43.304–1 Reporting.

§ 109–43.304–1.50 DOE reutilization screening.

(a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period.

REAPS also provides for a 15-day expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through ERLE.

(c) Items in FSCG 66 (Instruments and Laboratory Equipment), 70 (General Purpose Information Processing Equipment (including firmware)), and 99 (Miscellaneous) are reportable when the unit acquisition cost is $1,000 or more.

(d) In exceptional or unusual cases when time is critical, screening of excess property may be accomplished by telegram or facsimile with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(e) Concurrent DOE and Federal agency screening generally shall not be conducted.

§ 109–43.304–1.51 Transfers within DOE.

Transfers within DOE generally shall be effected by completion of a SF–122, Transfer Order Excess Personal Property. Except for those designated contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE property administrator for the contractor receiving the property.

§ 109–43.304–2 Form and distribution of reports.

Reportable property will be electronically reported by REAPS directly to GSA following internal DOE and ERLE screening.

§ 109–43.304–4 Property at installations due to be discontinued.

When closing installations, DOE offices shall work with the appropriate GSA regional offices to develop site utilization and disposal programs:

(a) In developing a disposal program, property shall be determined to be excess to DOE needs before reporting it to GSA.

(b) If a deviation from DOE policy or procedures is required, prior written approval of the Deputy Assistant Secretary for Procurement and Assistance Management shall be obtained.

(c) When deviation from existing GSA regulations is involved, approval by the appropriate GSA regional office will be sufficient to validate the disposition. A copy of the GSA approval should be forwarded for information to the DPMO.

§ 109–43.305 Property not required to be formally reported.

(a) [Reserved]

(b) Equipment, parts, accessories, jigs and components which are of special design, composition, or manufacture and which are intended for use only by specific DOE installations (such as spare parts for equipment used in atomic processes) are not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

§ 109–43.307 Items requiring special handling.

§ 109–43.307–2 Hazardous materials.

§ 109–43.307–2.50 Monitoring of hazardous personal property.

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal

property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

§ 109–43.307–2.51 Holding hazardous personal property.

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

§ 109–43.307–3 Conditional gifts for defense purposes.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–4 Conditional gifts to reduce the public debt.

The Director, Office of Administrative Services and heads of field organizations shall take appropriate action as required when conditional gifts are offered.

§ 109–43.307–50 Export controlled personal property.

(a) When personal property that is subject to export controls is being exported directly by DOE (e.g., a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, co-operative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

§ 109–43.307–51 Classified personal property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

§ 109–43.307–53 Automatic data processing equipment (ADPE).

All ADPE shall be sanitized before being transferred into excess to ensure

that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. Sanitized ADPE will be utilized and disposed in accordance with the provisions of the FPMR.

§ 109–43.307–54 Unsafe personal property.

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

§ 109–43.312 Use of excess personal property on cost-reimbursement contracts.

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

§ 109–43.313 Use of excess personal property on cooperative agreements.

(a)–(c) [Reserved]

(d) Heads of field organizations shall ensure that required records are maintained in a current status.

§ 109–43.314 Use of excess personal property on grants.

(a)–(e) [Reserved]

(f) Heads of field organizations shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

§ 109–43.315 Certification of non-Federal agency screeners.

(a)–(c) [Reserved]

(d) Contracting officers shall maintain a record of the number of certified non-Federal agency screeners operating under their authority and shall immediately notify the appropriate GSA regional office of any changes in screening arrangements.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

§ 109–43.502 Holding agency responsibilities.

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a)–(b) [Reserved]

(c) The annual report of personal property furnished (e.g., transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA by the DPMO. Feeder reports, using the format illustrated below, shall be submitted to the DPMO by November 15 of each year.

(1) Field office feeder reports shall include the following:

(i) Data for all excess personal property obtained from other Federal agencies and furnished to any DOE offsite or designated contractor or financial assistance recipient;

(ii) Data for all DOE personal property no longer needed by a DOE direct operation and subsequently furnished to any DOE offsite or designated contractor or financial assistance recipient.

(iii) Data for all personal property furnished to elementary and secondary schools and non-profit organizations under initiatives to support science and mathematics education.

(2) Field office feeder reports shall not include data for contractor inventory which is declared excess and subsequently redistributed through REAPS (or other means within DOE) to other DOE contractors or designated contractors' subcontractors.

(3) The feeder report from the Office of Science Education Programs, using the following format, will include data for all personal property furnished to non-federal recipients and institutions of higher learning under the ERLE Grant Program.

Name and address of recipient	Recipient's status	Original cost of property	Digit federal supply classification group

Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5000 Scope of subpart.

This subpart supplements 41 CFR part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5001 Definition.

Facility in standby means a complete plant or section of a plant, which is neither in service or declared excess.

§ 109–43.5002 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

PART 109–44—DONATION OF PERSONAL PROPERTY

Subpart 109–44.7—Donations of Property to Public Bodies

Sec.
109–44.701 Findings justifying donation to public bodies.
109–44.702 Donations to public bodies.
109–44.702–3 Hazardous materials.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 63 FR 19643, Apr. 20, 1998, unless otherwise noted.

Subpart 109–44.7—Donations of Property to Public Bodies

§ 109–44.701 Findings justifying donation to public bodies.

The Director, Office of Administrative Services and heads of field organizations shall appoint officials to make required findings and reviews.

§ 109–44.702 Donations to public bodies.

§ 109–44.702–3 Hazardous materials.

The Director, Office of Administrative Services and heads of field organizations shall be responsible for the safeguards, notifications, and certifications required by 41 CFR part 101–42 and part 109–42 of this chapter, as well as compliance with all other requirements therein.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Subpart 109–45.1—General

Sec.
109–45.105 Exclusions and exemptions.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.300–50 Sales by designated contractors.
109–45.301–51 Export/import clause.
109–45.302 Sale to Government employees.
109–45.302–50 Sales to DOE employees and designated contractor employees.
109–45.303 Reporting property for sale.
109–45.303–3 Delivery.
109–45.304 Sales methods and procedures.

109–45.304–2 Negotiated sales and negotiated sales at fixed prices.
109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and awarding of contracts.
109–45.304–51 Documentation.
109–45.309 Special classes of property.
109–45.309–2.50 Hazardous property.
109–45.309–51 Export controlled property.
109–45.309–52 Classified property.
109–45.309–53 Nuclear-related or proliferation-sensitive property.
109–45.309–54 Automatic Data Processing Equipment (ADPE).
109–45.310 Antitrust laws.
109–45.317 Noncollusive bids and proposals.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

109–45.601 Policy.
109–45.602 Listing debarred or suspended contractors.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

109–45.901 Authority to abandon or destroy.
109–45.902 Findings justifying abandonment or destruction.
109–45.902–2 Abandonment or destruction without notice.

Subpart 109–45.10—Recovery of Precious Metals

109–45.1002 Agency responsibilities.
109–45.1002–3 Precious metals recovery program monitor.
109–45.1003 Recovery of silver from precious metals bearing materials.
109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

Subpart 109–45.47—Reports

109–45.4702 Negotiated sales reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5005 Disposal.
109–45.5005–1 General.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

109–45.5100 Scope of subpart.
109–45.5101 Authority.
109–45.5102 General.
109–45.5103 Definitions.
109–45.5104 Disposal.
109–45.5104–1 General.
109–45.5104–2 Methods of disposal.
109–45.5105 Reports.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), para. 101–45.400–45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 3041.

SOURCE: 63 FR 19643, Apr. 20, 1998, unless otherwise noted.

Subpart 109–45.1—General

§ 109–45.105 Exclusions and exemptions.

§ 109–45.105–3 Exemptions.

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR 101–45.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.300–50 Sales by designated contractors.

Sales of surplus contractor inventory will be conducted by designated contractors when heads of field organizations determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

§ 109–45.301–51 Export/import clause.

The following clause shall be included in all sales invitations for bid:

> Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to pass on DOE's export control guidance if the property is resold or otherwise disposed.

§ 109–45.302 Sale to Government employees.

§ 109–45.302–50 Sales to DOE employees and designated contractor employees.

(a) DOE employees and employees of designated contractors shall be given

the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

§ 109–45.303 Reporting property for sale.

§ 109–45.303–3 Delivery.

(a)–(b) [Reserved]

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

§ 109–45.304 Sales methods and procedures.

§ 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.

(a)(1) [Reserved]

(2) The head of each field organization shall designate a responsible person to approve negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

(b) [Reserved]

§ 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, heads of field organizations may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed $15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

§ 109–45.304–6 Reviewing authority.

The reviewing authority may consist of one or more persons designated by the head of the field organization.

§ 109–45.304–50 Processing bids and awarding of contracts.

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

§ 109–45.304–51 Documentation.

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/ invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds $1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (e.g., newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

§ 109–45.309 Special classes of property.

§ 109–45.309–2.50 Hazardous property.

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

§ 109–45.309–51 Export controlled property.

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

§ 109–45.309–52 Classified property.

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

§ 109–45.309–53 Nuclear-related or proliferation sensitive property.

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–43.307–52 of this subpart have been met.

§ 109–45.309–54 Automatic Data Processing Equipment (ADPE).

ADPE shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

§ 109–45.310 Antitrust laws.

DOE offices shall submit to the Deputy Assistant Secretary for Procurement and Assistance Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal

property with a fair market value of $3,000,000 or more.

§ 109–45.317 Noncollusive bids and proposals.

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors

§ 109–45.601 Policy.

(a)–(b) [Reserved]

(c) The Director, Office of Administrative Services and heads of field organization shall make the compelling reason determination when entering into a contract for the purchase of surplus Government personal property by a debarred or suspended contractor.

(d) The Deputy Assistant Secretary for Procurement and Assistance Management shall make the determination for simultaneously debarring and suspending a contractor from the purchase of surplus Federal personal property and the award of sales contracts.

§ 109–45.602 Listing debarred or suspended contractors.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations shall establish procedures to ensure that listed contractors are not awarded contracts.

Subpart 109–45.9—Abandonment or Destruction of Personal Property

§ 109–45.901 Authority to abandon or destroy.

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

§ 109–45.902 Findings justifying abandonment or destruction.

§ 109–45.902–2 Abandonment or destruction without notice.

The head of the field organization shall designate an official to make the findings justifying abandonment or destruction without public notice of personal property. The OPMO shall review and coordinate on the findings.

Subpart 109–45.10—Recovery of Precious Metals

§ 109–45.1002 Agency responsibilities.

The Director, Office of Administrative Services and heads of field organizations are responsible for establishing a program for the recovery of precious metals.

§ 109–45.1002–3 Precious metals recovery program monitor.

The DPMO shall be the precious metals recovery program monitor.

§ 109–45.1003 Recovery of silver from precious metals bearing materials.

The Director, Office of Administrative Services and heads of field organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

§ 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

Subpart 109–45.47—Reports

§ 109–45.4702 Negotiated sales reports.

The report of negotiated sales shall be submitted by DOE offices to the DPMO by November 15 of each year for furnishing to GSA.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5005 Disposal.

§ 109–45.5005–1 General.

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§ 109–43.307–50, 109–43.307–51, and 109–43.307–52 of this chapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

§ 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

§ 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of 40 USC 471, Federal Property and Administrative Services Act of 1949, as amended. Title IV of the Act entitled ''Foreign Excess Property'' provides that, except where commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

§ 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

Foreign means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

Foreign service post means the local diplomatic or consular post in the area where the excess personal property is located.

§ 109–45.5104 Disposal.

§ 109–45.5104–1 General.

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c) of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Deputy Assistant Secretary for Procurement and Assistance Management for review, coordination, and handling.

§ 109–45.5104–2 Methods of disposal.

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Advance approval must be obtained from the State Department for the sale of all such articles. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) Prior to the sale of personal property which has a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the DPMO with ample time to allow consideration of possible foreign policy issues and advice thereon from the State Department (see section 109–45.5106(a) of this subpart). All proposed sales, regardless of the total acquisition cost of the personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2(a) of this subpart.

(c)(1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Deputy Assistant Secretary for International Energy Policy, Trade and Investment is required.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

§ 109–45.5105 Reports.

(a) Proposed sales of foreign surplus personal property having an acquisition cost of $250,000 or more shall be reported to the DPMO and should include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U.S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (e.g., sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (i.e., U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (e.g., host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

(b) Instructions for reporting foreign excess utilization and disposal transactions are contained in Chapter III of DOE Order 534.1, Accounting.

PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.
109–46.000 Scope of part.
109–46.000–50 Applicability.

Subpart 109–46.2—Authorization

109–46.202 Restrictions and limitations.
109–46.203 Special authorizations.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 63 FR 19646, Apr. 20, 1998, unless otherwise noted.

§ 109–46.000 Scope of part.

§ 109–46.000–50 Applicability.

(a) Except as set forth in paragraphs (a)(1)–(a)(5), the requirements of FPMR Part 101–46 and this part are not applicable to designated contractors. Designated contractors shall comply with the following FPMR requirements:

(1) 101–46.200

(2) 101–46.201–1

(3) 101–46.202(b)(2), (3), (4), (5), (6), and (7)

(4) 101–46.202(c)(1), (2), (4), (5), (6), (7), (10), (11), and (12)

(5) 101–46.202(d)

(b) Items in the following Federal Supply Classification Groups (FSCG) are not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

FSCG	DESCRIPTION
10	Weapons
11	Nuclear ordnance
12	Fire control equipment

14 Guided missiles
15 Aircraft and airframe structural components (except FSC Class 1560, Airframe structural components)
20 Ship and marine equipment
22 Railway equipment
41 Firefighting, rescue, and safety equipment

Subpart 109–46.2—Authorization

§ 109–46.202 Restrictions and limitations.

(a)–(c)(9) [Reserved]

(10) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.

(11) [Reserved]

(12) Heads of field organizations shall make the determination concerning demilitarization of combat material.

§ 109–46.203 Special authorizations.

(a) [Reserved]

(b) The Director, Office of Administrative Services and heads of field organizations for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.000–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101 Forfeited or voluntarily abandoned property.
109–48.101–6 Transfer to other Federal agencies.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

SOURCE: 63 FR 19647, Apr. 20, 1998, unless otherwise noted.

§ 109–48.000 Scope of part.

§ 109–48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 109–48.101 Forfeited or voluntarily abandoned property.

§ 109–48.101–6 Transfer to other Federal agencies.

(a)–(e) [Reserved]

(d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.

(f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for approval.

PART 109–50—SPECIAL DOE DISPOSAL AUTHORITIES

Sec.
109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

109–50.100 Scope of subpart.
109–50.101 Applicability.
109–50.102 General.
109–50.103 Definitions.
109–50.104 Equipment which may be granted.
109–50.105 Equipment which may not be granted.
109–50.106 Procedure.
109–50.107 Reporting.

Subpart 109–50.2—Math and Science Equipment Gift Program

109–50.200 Scope of subpart.
109–50.201 Applicability.
109–50.202 Definitions.
109–50.203 Eligible equipment.
109–50.204 Limitations.
109–50.205 Procedure.
109–50.206 Reporting.

Subpart 109–50.3 [Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Submission of proposals.
109–50.403 Need to establish DOE program benefit.

Subpart 109–50.48—Exhibits

109–50.4800 Scope of subpart.
109–50.4801 Equipment Gift Agreement.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Energy Reorganization Act of 1974, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Office of Energy Research Financial Assistance Regulations (10 CFR part 605).

SOURCE: 63 FR 19647, Apr. 20, 1998, unless otherwise noted.

§ 109–50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

§ 109–50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

Subpart 109–50.1—Used Energy-Related Laboratory Equipment Grant Program

§ 109–50.100 Scope of subpart.

This subpart provides guidance on the granting of used energy-related laboratory equipment to universities and colleges and other nonprofit educational institutions of higher learning in the United States for use in energy-oriented educational programs.

§ 109–50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

§ 109–50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment (ERLE) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

§ 109–50.103 Definitions.

As used in this subpart the following definitions apply: *Book value* means acquisition cost less depreciation. *DOE Financial Assistance Rules* (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

Eligible institution means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

Energy-oriented education program means one that deals partially or entirely in energy or energy-related topics.

§ 109–50.104 Equipment which may be granted.

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Laboratory Policy and Infrastructure Management and approved by the

DPMO, are made available under the program.

§ 109–50.105 Equipment which may not be granted.

Equipment which will not be granted include:

(a) Any equipment determined to be required by DOE direct operations or DOE designated contractors; or

(b) General supplies, such as Bunsen burners, hoods, work benches; office equipment and supplies; furniture; drafting supplies; refrigerators; tools; presses; lathes; furnaces; hydraulic and mechanical jacks; cranes; and hoists.

§ 109–50.106 Procedure.

(a) After DOE utilization screening through REAPS, items eligible for ERLE grants are extracted from the REAPS system and provided to the Office of Energy Research by electronic means.

(b) The Office of Energy Research provides this information to prospective grantees through an automated system.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

§ 109–50.107 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and 109–43.4701(c).

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.2—Math and Science Equipment Gift Program

§ 109–50.200 Scope of subpart.

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

§ 109–50.201 Applicability.

The provisions of this subpart are applicable to DOE offices and designated contractors.

§ 109–50.202 Definitions.

As used in this subpart the following definitions apply:

DOE Field Organizations means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

Education-related and Federal research equipment includes but is not limited to DOE-owned property in FSCG 34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

Eligible recipient means local elementary and secondary schools and nonprofit organizations.

Elementary and secondary schools means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

Facilities under DOE Field Organization cognizance means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

§ 109–50.203 Eligible equipment.

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

FSCG	Description
34	Metalworking Machinery.
36	Special Industry Machinery.
41	Refrigeration, Air Conditioning and Air Circulating Equipment.
52	Measuring Tools
60	Fiber Optics Materials, Components, Assemblies and Accessories.
61	Electric Wire, and Power and Distribution Equipment.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
70	General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment
74	Office Machines, Text Processing Systems and Visible Record Equipment.

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

§ 109–50.204 Limitations.

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Director, Office of Laboratory Policy and Infrastructure Management may authorize gifts of excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds $25,000 or the cumulative book value of the gifts under this program to any one institution exceeds $25,000. HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

§ 109–50.205 Procedure.

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients and the chief State School Board Officer.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (e.g., an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the chief State School Board Officer. The Chief State School Board Officer will determine which schools within the state will receive which equipment. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(e) Eligible recipients will have 30 days to select and freeze, on a first

come, first serve basis, the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and

(2) How the gift will be used to improve math and science curricula or in the conduct of technical and scientific education and research activities.

(f) The cost of shipping should be minimal and not more than the actual equipment value.

(g) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in section 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Director, Office of Laboratory Policy and Infrastructure Management or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

§ 109–50.206 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this chapter.

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

Subpart 109–50.3 [Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

§ 109–50.401 Definitions.

As used in this subpart, the following definitions apply;

Contractor means the operator of the mixed facility.

DOE property means DOE-owned personal property located in a mixed facility.

Mixed facility means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

§ 109–50.402 Submission of proposals.

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the DPMO, for review and processing for approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether ''as is-where is,'' etc.

§ 109–50.403 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program.

For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

Subpart 109–50.48—Exhibits

§ 109–50.4800 Scope of subpart.

This subpart exhibits information referenced in the text of part 109–50 of this chapter that is not suitable for inclusion elsewhere in that part.

§ 109–50.4801 Equipment Gift Agreement.

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this chapter).

EQUIPMENT GIFT AGREEMENT

_____
(Reference Number)

Between The U.S. Department of Energy and

_____
(Name of Eligible Recipient)

I. Purpose

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient), hereafter referred to as the Recipient, for the purpose of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

II. Authority

Federal agencies have been directed, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710 (i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

III. Agreement

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

_____
(U.S. Department of Energy Office)

_____
(Name and Address of Recipient)

_____
(Signature of HCA or Designee)

_____
(Signature of Official)

_____
Typed Name)

_____
(Typed Name)

_____
(Typed Title)

_____
Typed Title)

_____
(Date)

(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the

Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

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PART 114–51—GOVERNMENT FURNISHED QUARTERS

AUTHORITY: 5 U.S.C. 301.

Subpart 114–51.1—General

§ 114–51.100 Departmental Quarters Handbook.

The Office of Acquisition and Property Management (PAM) has prepared the Departmental Quarters Handbook (DQH), 400 DM, which provides detailed guidelines governing administration, management and rental rate establishment activities relating to Government furnished quarters (GFQ). Officials responsible for administration and management of quarters shall implement and comply with the provisions of the DQH, and shall ensure its availability for examination by all employees.

[60 FR 3555, Jan. 18, 1995]

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AUTHORITY: Sec. 205(c), 63 Stat. 377, as amended; 40 U.S.C. 486(c).

SOURCE: 36 FR 8568, May 8, 1971, unless otherwise noted.

Subpart 115–1.1—Regulation System

§ 115–1.100 Scope of subpart.

This subpart establishes the Environmental Protection Agency Property Management Regulations (EPPMR), chapter 115 of the Federal Property Management Regulations System (FPMR) (41 CFR chapter 101); states its relationship to the FPMR, and provides instructions governing the property management policies and procedures of the Environmental Protection Agency (EPA).

§ 115–1.103 Temporary-type FPMR.

§ 115–1.103–50 Temporary-type changes to EPPMR.

Where required, temporary changes will be published as EPPMR-Temporary Regulations. Temporary Regulations will be cross-referenced to related EPPMR subparts and will indicate dates for compliance with, and cancellation of each issuance.

§ 115–1.104 Publication of FPMR.

§ 115–1.104–50 Publication of EPPMR.

(a) Material published in the EPPMR will generally not be of interest to nor directly affect the public. Therefore, most EPPMR material will not be published in the FEDERAL REGISTER.

(b) Arrows printed in the margin of a page indicate material changed, deleted, or added by the EPPMR Transmittal Notice cited at the bottom of that page. (See GSA, FPMR Amendment Transmittal pages for illustrations.)

§ 115–1.106 Applicability of FPMR.

The FPMR apply to all EPA activities unless otherwise specified, or unless a deviation is approved.

§ 115–1.108 Agency implementation and supplementation of FPMR.

(a) EPPMR implements and supplements the FPMR and follows the FPMR in style, arrangement and numbering sequence. Except to assure continuity and understanding FPMR material will not be repeated or paraphrased in the EPPMR.

(b) Implementing material expands upon related material in the FPMR. Supplementing material deals with subject material not covered in the FPMR.

§ 115–1.109 Numbering in FPMR system.

(a) The numbering system used in EPPMR conforms to that of the FPMR except for the chapter number. The first three digits represent the Chapter number assigned to this Agency in title 41, Code of Federal Regulations (CFR). In FPMR the chapter number is 101 and in EPPMR the Chapter number is 115.

(b) Where EPA Chapter 115 implements Chapter 101 the material will be numbered and captioned to correspond to the FPMR part, subpart, section or subsection, e.g., 115–1.106 ''Applicability of FPMR'' implements 101–1.106 of FPMR.

(c) Where Chapter 115 supplements the FPMR and deals with subject matter not contained in the FPMR, the EPPMR material is numbered to follow that which is most closely related to similar material in the FPMR, Supplementing material is numbered ''50'' or higher.

§ 115–1.110 Deviations.

Where deemed necessary that regulations set forth in the FPMR or EPPMR be changed in the interest of program effectiveness, a proposed revision will be submitted in accordance with FPR §1–1.009, to the Division of Data and

Support Systems (DSSD) for review and consideration.

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PART 128–1—INTRODUCTION

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AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c), 41 CFR 101–1.108, and 28 CFR 0.75(i), unless otherwise noted.

SOURCE: 41 FR 45987, Oct. 19, 1976, unless otherwise noted.

Subpart 128–1.1—Regulation System

§ 128–1.100 Scope of subpart.

This subpart introduces the Department of Justice Property Management Regulations (JPMR) as part of the Federal Property Management Regulations System (FPMR) (41 CFR part 101); states its relationship to the FPMR; and provides instructions for the issuance and use of these property management policies and procedures of the Department of Justice.

§ 128–1.101 Justice Property Management Regulations.

The JPMR, established in this subpart, implement and supplement, as necessary, the FPMR provisions governing the acquisition, utilization, management, and disposal of real and personal property. The JPMR are issued to establish uniform property management policies, regulations, and, as necessary, procedures in the Department of Justice.

§ 128–1.105 Authority for JPMR.

The Department of Justice Property Management Regulations are prescribed by the Assistant Attorney General for Administration under authority of 5 U.S.C. 301, 40 U.S.C. 486(c), 41 CFR 101–1.108, and 28 CFR 0.75(j).

§ 128–1.152 Citation.

The JPMR will be cited in accordance with the FEDERAL REGISTER standards applicable to the FPMR. Accordingly, when this section is referred to formally in official documents, it should be cited as ''41 CFR 128–1.152.'' When a section of the JPMR is referred to informally, however, it may be identified simply by ''JPMR'' followed by the complete paragraph reference number, e.g., ''JPMR 128–1.152.''

Subpart 128–1.50—Authorities and Responsibilities for Personal Property Management

§ 128–1.5001 Scope of subpart.

This subpart sets forth general definitions of terms used throughout the JPMR and states responsibilities and authorities within the Department of

Justice as they pertain to personal property management functions.

§ 128–1.5002 Definitions.

§ 128–1.5002–1 Acquire.

To procure, purchase, or obtain in any manner, except by lease, including transfer, donation or forfeiture, manufacture, or production at Government-owned plants or facilities.

§ 128–1.5002–2 Department.

The Department of Justice, including all its Bureaus and their respective field operations in all locations.

§ 128–1.5002–3 Head of the Agency/Department.

The Attorney General of the United States.

§ 128–1.5002–4 Bureau.

The Federal Bureau of Investigation; the Law Enforcement Assistance Administration; the Immigration and Naturalization Service; the Drug Enforcement Administration; the Bureau of Prisons; the Federal Prison Industries, Incorporated; and the Operations Support Staff (OSS) of the Office of Management and Finance. The OSS has authority and is responsible for all personal property management functions for the Offices, Boards, and Divisions of the Department, the United States Marshals Service, and the United States Parole Commission.

§ 128–1.5002–5 Personal property.

Property of any kind or interest therein, except real and related property (as defined in FPMR 41 CFR 101–43.104–15), records of the Federal Government, and naval vessels, cruisers, aircraft-carriers, destroyers, and submarines (FPMR 41 CFR 101–43.104–13). For management and accounting control, personal property is categorized as follows:

(a) ''Expendable personal property'' is that which, by its nature or function, is consumed in use; is used as repair parts or components of an end product considered nonexpendable; or has an expected service life of less than one year.

(b) ''Non-expendable personal property'' is that which is complete within itself, does not lose its identity or become a component part of another article when put into use, and is of a durable nature with an expected service life one or more years.

(c) ''Controlled personal property'' is that personal property for which good management practice dictates that it would be in the interest of the Government to assign and record accountability to assure the proper use, maintenance, protection and disposal of property for which the Government is responsible. Includes, but is not restricted to property which:

(1) Is leased by, in the custody of, or is loaned to or from the Department.

(2) Due to inherent attractiveness and/or portability is subject to a high probability of theft or misuse.

(3) Is warranted, requires knowledge of age and/or previous repair data when determining whether repair or replacement is appropriate.

§ 128–1.5002–6 Personal property management.

A system for controlling the acquisition, receipt, storage issue, utilization, maintenance, protection, accountability, and disposal of personal property to best satisfy the program needs of the Department.

§ 128–1.5002–7 Property management officer (PMO).

An individual responsible for the overall administration, coordination, and control of the personal property management program of a bureau. The designation as PMO may or may not correspond to the individual's official job title.

§ 128–1.5002–8 Property custodian (PC).

An individual responsible for the immediate physical custody of all personal property under his control and for providing documentation as required on all actions affecting the personal property within his jurisdiction. The designation as PC may or may not correspond to the individual's official job title.

§ 128–1.5002–9 Supply support system.

The sum of all actions taken in providing buildings, equipment, supplies, and services to support program areas.

§ 128–1.5003 Primary authority and responsibility.

(a) The Attorney General of the United States has the primary authority and responsibility for providing direction, leadership, and general supervision in the development and administration of an effective and efficient supply support system for the Department, to include:

(1) The establishment of Department-wide policies, directions, regulations, and procedures satisfying the requirements of law, regulations, and sound management practice; and

(2) The review, evaluation, and improvement of personal property management programs, functions, operations, and procedures throughout the Department.

(b) Pursuant to 28 CFR 0.75 and subject to the general supervision of the Attorney General and the direction of the Deputy Attorney General, the functions described above are assigned to the Assistant Attorney General for Administration as delegations of authority.

§ 128–1.5004 Basis for delegations of authority and assignment of responsibilities.

Certain personal property management functions can be performed by an individual only under a specific grant of authority to that individual. Other functions may be performed simply on the basis of general instructions or directions or by virtue of an individual occupying the position to which the responsibility for the function is assigned. In either situation, to eliminate excessive delay and to reduce unnecessary involvement of multiple management levels, it is considered generally desirable to place authority and responsibility for and to exercise property management actions at the lowest organizational unit practical. Accordingly, specific redelegations of the authority vested in the Assistant Attorney General for Administration are made to the heads of bureaus for the personal property management functions listed in § 128–1.5005 below. The authority to prescribe and issue Department-wide policies, regulations, and procedures for personal property management is not redelegated and remains solely within the jurisdiction of the Assistant Attorney General for Administration.

§ 128–1.5005 Delegations of authority.

§ 128–1.5005–1 Primary delegations.

The following authorities are redelegated to the heads of bureaus for use within their respective jurisdictions and shall be exercised in accordance with the policies and procedures established by the Assistant Attorney General for Administration.

(a) Designating the PMO, for the bureau, within the following limitations:

(1) Only one PMO is to be designated for the bureau, at the bureau level. Neither the title designation nor the responsibilities of the PMO are to be delegated below that level.

(2) One or more PC's also may be designated for the bureau, depending upon the size and complexity of the organizational structure. Each PC is responsible solely for that property within his respective jurisdiction. The number and distribution of PC's designated is entirely at the option of the head of the bureau.

(3) There is no restriction on designating a single individual as PMO and PC providing that the functions and responsibilities are compatible and are within the capabilities of a single person.

(b) Authorizing exceptions to the FPMR use and replacement standards for office machines, furniture, furnishings and typewriters specified in §§ 101–25.3 and 101–25.4.

(c) Authorizing exceptions to FPMR replacement standards for materials handling equipment specified in § 101–25.304.

(d) Authorizing the procurement of passenger motor vehicles with additional systems or equipment or the procurement of additional systems or equipment for passenger motor vehicles already owned or operated by the Government, in conformance with Federal Standards No. 122 and § 101–25.304.

(e) Authorizing the retention for official use by the bureau of abandoned or other unclaimed personal property and of personal property which is voluntarily abandoned or forfeited other than by court decree.

(f) Determining when personal property becomes excess and reporting the excess property to the General Services Administration (GSA).

(g) Assigning or transferring excess personal property within the bureau to other bureaus of the Department, other Federal agencies, the Legislative Branch to the Judicial Branch, to wholly-owned or mixed-ownership Government corporations, to cost-reimbursable type contractors, or to authorized grantees.

(h) Transferring property forfeited to the Government to other authorized recipients or requesting judicial transfer of such property from others to the bureau.

(i) Determining fair market value of abandoned and other unclaimed property retained for official use by the bureau, for deposit to a special fund for reimbursement of owners.

(j) Approving claims and reimbursing, less direct costs, former owners of abandoned or other unclaimed personal property which has been sold or retained for official use.

(k) Recommending non-Federal grantee excess property screeners to GSA as required in FPMR 101–43.320(h).

(l) When authorized by statutory authority, vesting title to Government-furnished personal property in contractors or grantees.

(m) Acquiring excess personal property from other bureaus and from other Federal agencies.

§ 128–1.5005–2 Redelegations of authority.

(a) The authorities delegated by the Assistant Attorney General for Administration to heads of bureaus may, in turn, be redelegated as necessary to enable personal property management functions to be performed at the organizational level best equipped to handle such functions, unless otherwise prohibited by this regulation.

(b) Such redelegations can be made without the specific approval of the Assistant Attorney General for Administration to deputies, principal administrative officers, heads of field offices and installations and their respective deputies. Such redelegations shall not conflict with the duties or responsibilities assigned to the PMO, or PC under the JPMR.

(c) Existing delegations of authority by the Assistant Attorney General for Administration in matters of personal property management which are not covered in this section shall continue in effect until modified or revoked.

(d) Redelegations of authorities made in accordance with this section shall be in writing and shall be made available for audits, surveys, or as otherwise appropriate.

§ 128–1.5006 General responsibilities.

§ 128–1.5006–1 Head of bureau.

The head of a bureau is responsible for establishing and administering a property management program within his respective operation which will provide for:

(a) The planning and scheduling of property requirements to assure that supplies, equipment, and space are readily available to satisfy program needs while minimizing operating costs and inventory levels.

(b) The creation and maintenance of complete, accurate inventory control and accountability record systems.

(c) The maximum utilization of available property for official purposes.

(d) The proper care and securing of property, to include storage, handling, preservation, and preventative maintenance.

(e) The identification of property excess to the needs of the bureau which must be made available to other Departmental activities and reported to GSA for transfer, donation, or disposal, as appropriate, under the provisions of the FPMR and JPMR.

(f) The submission of required property management reports.

(g) The conducting of periodic management reviews within the activity to assure compliance with prescribed policies, regulations, and procedures and to determine additional guidance or training needs.

(h) Advising all bureau employees of their responsibilities for Government property.

(i) Supporting general ledger control accounts for personal property by establishing subsidiary accounts and records as prescribed by the bureau in accordance with the provisions of DOJ Order 2110.1, Paragraph 4(b)(c).

§ 128–1.5006–2 Property management officer (PMO).

The property management officer of a bureau is responsible for coordinating and conducting the activities of the personal property management program and for performing the following functions:

(a) Providing the required leadership, guidance, and operating procedures for personal property management functions.

(b) Ensuring general ledger control accounts for personal property are supported by property records in accordance with DOJ Order 2110.1, Paragraph 6.103b(4).

(c) Ensuring bureau compliance with the personal property management requirements of the FPMR and JPMR.

(d) Designating items of controlled personal property within the bureau.

(e) Ensuring records of controlled personal property are created and maintained by personnel other than property custodians.

§ 128–1.5006–3 Department employees.

Each employee of the Department who has use of, supervises the use of, or has control over Government property is responsible for that property. This responsibility may take either or both of the following forms:

(a) Supervisory responsibility, in which an officer-in-charge, and administrative officer, or a supervisor is obligated to establish and enforce necessary administrative and security measures to ensure proper preservation and use of all Government property under his jurisdiction.

(b) Personal responsibility, in which each employee of the Department is obligated to properly care for, handle, use, and protect Government property issued to or assigned for the employee's use at or away from the office or station.

§ 128–1.5007 Reproduction of departmental and bureau seals.

(a) Requests for permission to reproduce the Departmental seal for commercial, educational, ornamental or other purposes by other government agencies or private entities shall be referred to the Assistant Attorney General for Administration for decision.

(b) Requests for permission to reproduce the seals of the Federal Bureau of Investigation, the Bureau of Prisons, the Federal Prison Industries, the Immigration and Naturalization Service, the Board of Parole, the Drug Enforcement Administration, and the United States Marshals Service for such purposes by other government agencies or private entities shall be referred to the head of the respective Departmental organization for decision.

(c) The decision whether to grant such a request shall be made on a case-by-case basis, with consideration of any relevant factors, which may include the benefit or cost to the government of granting the request; the unintended appearance of endorsement or authentication by the Department; the potential for misuse; the effect upon Departmental security; the reputability of the use; the extent of control by the Department over the ultimate use; and the extent of control by the Department over distribution of any products or publications bearing a Departmental seal.

[45 FR 55727, Aug. 21, 1980]

Subpart 128–1.80—Seismic Safety Program

AUTHORITY: 42 U.S.C. 7701 *et seq.*, E.O. 12699 (3 CFR, 1990 Comp., p. 269).

SOURCE: 58 FR 42876, Aug. 12, 1993; 59 FR 33439, June 29, 1994, unless otherwise noted.

§ 128–1.8000 Scope.

This subpart establishes a Seismic Safety Program for the Department of Justice and sets forth the policies and procedures for obtaining compliance with Executive Order 12699 (Executive Order), ''Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.''

§ 128–1.8001 Background.

The Earthquake Hazards Reduction Act of 1977 (Act), 42 U.S.C. 7701, *et seq.*, as amended, directs the Federal government to establish and maintain an effective earthquake hazards reduction program to reduce the risks to life and property from future earthquakes. Executive Order 12699 implements certain provisions of the Act by requiring Federal agencies responsible for the design and construction of new buildings to develop and implement a seismic safety program. The regulations in this subpart implement the Executive Order, and apply to buildings designed and constructed under the responsibility of the Department of Justice. These regulations do not apply to buildings used by the Department and obtained, through purchase or lease, by the General Services Administration or other Federal agencies.

§ 128–1.8002 Definitions of terms.

(a) *Construction documents*—Detailed plans and specifications for the construction of a building.

(b) *Building*—Any structure, fully or partially enclosed, used or intended for sheltering persons or property.

(c) *New building*—A building, or an addition to an existing building, for which development of construction documents was initiated after January 5, 1990.

(d) *Leased building*—A new building constructed expressly for lease by the Department of Justice, and for which the Department contracted with the lessor or owner to develop construction documents to meet the specifications of the Department.

(e) *Purchased building*—A new building constructed expressly for purchase by the Department, and for which the Department contracted with the owner/developer to develop construction documents meeting the specifications of the Department.

(f) *Assisted or regulated building*—A new building designed and constructed with funding assistance from the Department through Federal grants or loans, or guarantees of financing, through loan or mortgage insurance programs.

(g) *Covered building*—a new building owned, leased, purchased, or assisted or regulated by the Department of Justice.

§ 128–1.8003 Objective.

The Department shall comply with Executive Order 12699 for the purpose of reducing the risks to lives of occupants of new buildings owned by the Department, leased for Department uses, or purchased and constructed with assistance from the Department, and to other persons who would be affected by the failure of such buildings in earthquakes; improving the capability of essential new Department buildings to function during or after an earthquake; and protecting public investments in all covered buildings; all in a cost-effective manner.

§ 128–1.8004 Seismic Safety Coordinators.

(a) The Justice Management Division shall designate an individual with technical training, engineering experience and a seismic background as the Department of Justice Seismic Safety Coordinator who shall provide overall guidance for the implementation of the Seismic Safety Program for the Department. The Department Seismic Safety Coordinator shall, at a minimum:

(1) Monitor the execution and results of the efforts of the Department to upgrade the seismic safety of the Department's new construction activities;

(2) Implement seismic safety program changes, as required;

(3) Act as a point-of-contact for the Department in maintaining necessary records, and consolidate data pertaining to the seismic safety activities in the Department;

(4) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order;

(5) Notify each Component Seismic Coordinator about what information he must maintain under the Seismic Safety Program and what reports he must prepare;

(6) Prepare and forward for submission all reports, as required by law and regulation;

(7) Manage the Seismic Safety Program for all components of the Department, with the exception of the components listed in paragraph (b) of this section.

(b) The Component Head for the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the United States Marshals Service, shall designate a Component Seismic Safety Coordinator for his/her respective component. Each of these Component Seismic Safety Coordinators shall manage and implement the seismic safety policies and activities within the component. The Component Seismic Safety Coordinators shall, at a minimum:

(1) Provide guidance to component employees who undertake building activity;

(2) Maintain and provide data about the Seismic Safety Program, as requested by the Department Seismic Safety Coordinator;

(3) Monitor and record the cost, construction and other consequences attributable to compliance with the Executive Order; and

(4) Submit an annual Seismic Safety Program status report as directed by the Department Seismic Safety Coordinator.

§ 128–1.8005 Seismic safety standards.

(a) To meet the building and construction requirements of this subpart, the Department, except as noted, adopts as its seismic safety standards the seismic safety levels set forth in the model building codes that the Interagency Committee on Seismic Safety in Construction (ICSSC) recognizes and recommends as appropriate for implementing the Executive Order. The ICSSC, as of the date of this rule, recognizes and recommends:

(1) The 1991 International Conference of Building Officials (ICBO) Uniform Building Code (UBC);

(2) The 1992 Supplement to the Building Officials and Code Administrators International (BOCA) National Building Code (NBC); and

(3) The 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code (SBC).

(b) The seismic design and construction of a covered building shall conform to the model code applicable in the locality where the building is constructed, unless:

(1) The building code for the locality provides a higher level of seismic safety than provided by the appropriate model code, in which case the local code shall be utilized as the standard; or

(2) The locality does not have seismic safety building requirements, in which case the ICSSC model building code appropriate for that geographic area shall be utilized as the standard.

§ 128–1.8006 Seismic Safety Program requirements.

The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that an individual familiar with seismic design provisions of the Seismic Safety Standards (appropriate standards), or a professional, licensed engineer shall conduct the reviews required under this section, as appropriate.

(a) *New building projects*— Construction documents initiated after August 12, 1993, and which apply to new construction projects, shall comply with the appropriate standards and shall be reviewed for compliance. Once the reviewer determines that the documents comply, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards.

(b) *Existing building projects.*— For new buildings with construction documents that were initiated prior to August 12, 1993, the documents shall be reviewed to determine whether they comply with the appropriate standards. If the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the appropriate standards. If the reviewer determines that seismic deficiencies exist, the appropriate Component Head shall ensure completion of one of the following:

(1) For a new building project for which a contract for construction has

not been awarded, the construction documents shall be revised to incorporate the appropriate standards. The revised construction documents shall then be reviewed for compliance. Once the reviewer determines that the documents comply with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards.

(2) For a new building under construction, or for which construction has been completed, a corrective action plan shall be devised to bring the building into compliance with the appropriate standards. The plan shall then be reviewed for compliance. Once the reviewer determines that the plan complies with the standard, the reviewer shall affix his/her signature and seal (if a licensed engineer) to the approved documents and provide a statement certifying compliance with the Department standards. The Component Head shall ensure implementation of the approved plan.

(3) For an addition to an existing building, the review shall account for, in addition to the requirements provided in paragraphs (b) (1) or (2) of this section, as appropriate, any effect the addition will have on the seismic resistance of the existing portion of the structure. If the reviewer determines that the addition will decrease the level of seismic resistance of the existing building, the appropriate Component Head shall develop a plan of corrective action to restore the seismic integrity of the existing structure. Once the plan of corrective action has been accomplished, the reviewer shall verify that the current level of seismic resistance of the existing building at least equals the seismic resistance level of the building before the addition.

(c) The Department Seismic Safety Coordinator and each Component Seismic Safety Coordinator shall ensure that statements verifying compliance made under this subpart have been completed and retained by the appropriate contracting officer when the Department contracted for design or design review services, or by an individual designated by the Component Head where the Department has not contracted for either design or design review.

§ 128–1.8007 Reporting.

The Department shall file reports on the execution of the Executive Order as required under the Order, and as required by the Federal Emergency Management Agency.

§ 128–1.8008 Exemptions.

The Executive Order exempts from the regulations in this subpart only those categories of buildings exempted by the ''National Earthquake Hazards Reduction Program Recommended Provisions for the Development of Seismic Regulations for New Buildings.'' The Department Seismic Safety Coordinator shall maintain the latest version of this document.

§ 128–1.8009 Review of Seismic Safety Program.

The Department shall review and, as necessary, revise the Seismic Safety Program once every three years from August 12, 1993.

§ 128–1.8010 Judicial review.

Nothing in this subpart is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Justice, its Seismic Safety Coordinators, its officers, or any employee of the Department.

PART 128–18—ACQUISITION OF REAL PROPERTY

Subpart 128–18.50—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 128–18.5001–1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 25.

[52 FR 48025, Dec. 17, 1987]

PART 128–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

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AUTHORITY: 41 CFR 128–1.105.

SOURCE: 43 FR 3279, Jan. 24, 1978, unless otherwise noted.

§ 128–48.001 Definitions.

§ 128–48.001–5 Forfeited property.

Personal property acquired by a bureau, either by administrative process or by order of a court of competent jurisdiction pursuant to any law of the United States.

§ 128–48.001–50 Administrative or summary process.

Forfeiture is achieved by direction of the seizing bureau in lieu of the courts. The phrase shall be interpreted to mean by administrative process.

Subpart 128–48.1—Utilization of Abandoned and Forfeited Personal Property

§ 128–48.102–1 Vesting of title in the United States.

(a) Abandoned or other unclaimed property, subject to the provisions of section 203(m) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(m)), shall remain in the custody of and be the responsibility of the bureau finding such property.

(b) If the owner of such property is known, the owner shall be notified within 20 days of finding such property by certified mail at the owner's address of record that the property may be claimed by the owner or his designee and that if the property is not claimed within 30 days from the date the letter of notification is postmarked, the title of the property will vest in the United States.

(c) If the owner of such property is not known and the estimated value of the property exceeds $100, the bureau shall post notice within 20 days of finding such property, which contains the following information:

(1) A description of the property including model or serial numbers, if known.

(2) A statement of the location where the property was found and the office that has custody of it.

(3) A statement that any person desiring to claim the property must file with the bureau within 30 days from

the date of first publication a claim for said property.

(4) A complete mailing address is to be provided as a point of contact within the bureau for any person to obtain additional information concerning the property or the procedures involved in filing a claim.

Notice must be published once a week for at least three successive weeks. Sound judgment and discretion must be used in selecting the publication medium. Advertisements should be placed in a publication of general circulation within the judicial district where the property was found.

(d) Property, as described in paragraphs (b) and (c) of this section, shall be held for a period of 30 days from the date of the first publication of notice. Upon the expiration of this 30-day period, title to such property vests in the United States, except that title reverts to the owner where a proper claim is filed within three years from the date of vesting of title in the United States, but if the property has been in official use, transferred for official use, or sold at the time the proper claim is approved, title shall not revert back to the former owner. The former owner shall instead obtain reimbursement in accordance with 41 CFR 101–48.102–4 or 101–48.305–1.

(e) If the owner of such property is unknown and the estimated value of the property is $100 or less, no notice is required, and the property shall be held for a period of 30 days from the date of finding the property. Upon expiration of this 30-day period, title to such property vests in the United States.

§ 128–48.102–4 Proceeds.

(a) Records of abandoned or other unclaimed property will be maintained in such a manner as to permit identification of the property with the original owner, if known, when such property is put into official use or transferred for official use by the finding bureau. Records will be maintained until the three-year period for filing claims has elapsed to enable the bureau to determine the amount of reimbursement due to a former owner who has filed a proper claim for abandoned or other unclaimed property.

(b) Reimbursement for official use by the finding bureau or transfer for official use of abandoned or other unclaimed property that has been placed in a special fund by the bureau for more than three years shall be deposited in the Treasury of the United States as miscellaneous receipts, or in such other bureau accounts as provided by law.

§ 128–48.150 Determination of type of property.

If a bureau is unable to determine whether the personal property in its custody is abandoned or voluntarily abandoned, the bureau shall contact the regional office of the General Services Administration for the region in which the property is located for such a determination.

Subpart 128–48.3—Disposal of Abandoned and Forfeited Personal Property

§ 128–48.305–1 Abandoned or other unclaimed property.

Proceeds from the sale of abandoned or other unclaimed property that have been placed in a special fund by a bureau for more than three years shall be deposited in the Treasury of the United States as miscellaneous receipts, or in such other bureau accounts as provided by law.

Subpart 128–48.50—Proper Claims for Abandoned or Other Unclaimed Personal Property

§ 128–48.500 Scope of subpart.

This subpart sets forth the policies in regard to proper claims for abandoned or other unclaimed property.

§ 128–48.501 Definitions.

§ 128–48.501–1 Determining official.

The official who has the authority to grant or deny the claim for the abandoned or other unclaimed property.

§ 128–48.501–2 Claimant.

The person who submitted the claim for the abandoned or other unclaimed property.

§ 128–48.501–3 Owner.

The person who has primary and direct title to property (see 28 CFR 9.2(e)).

§ 128–48.501–4 Person.

An individual, partnership, corporation, joint venture, or other entity capable of owning property (see 28 CFR 9.2(f)).

§ 128–48.502 Procedures relating to claims.

(a) Upon receipt of a claim, an investigation shall be conducted to determine the merits of the claim, and the investigation's report shall be submitted to the determining official.

(b) The determining official shall be designated by the head of a bureau.

(c) Upon receipt of a claim and the report thereon by the determining official, he shall make a ruling based upon the claim and the investigation's report.

(d) Notice of the granting or denial of a claim for abandoned or other unclaimed property shall be mailed to the claimant or his attorney. If the claim is granted, the conditions of relief and the procedures to be followed to obtain the relief shall be set forth. If the claim is denied, the claimant shall be advised of the reason for such denial.

(e) A request for reconsideration of the claim may be submitted within 10 days from the date of the letter denying the claim. Such request shall be addressed to the head of the bureau and shall be based on evidence recently developed or not previously considered.

§ 128–48.503 General procedures.

(a) Claims shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property including serial numbers, if any.

(2) The interest of the claimant in the property, as owner, mortgagee, or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence.

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the claimant to justify the granting of the claim.

(b) If the claim is filed before title has vested in the United States, the determining official shall not grant the claim for the abandoned or other unclaimed property unless the claimant establishes a valid, good faith interest in the property.

(c) If the claim is filed after title has vested in the United States, the determining official shall not grant the claim for abandoned or other unclaimed property unless the claimant:

(1) Establishes that he would have a valid, good faith interest in the property had not title vested in the United States; and

(2) Establishes that he had no actual or constructive notice, prior to the vesting of title in the United States, that the property was in the custody of a bureau and that title, after the appropriate time period, would vest in the United States. A claimant shall be presumed to have constructive notice upon publication in a suitable medium concerning the property unless he was in such circumstances as to prevent him from knowing of the status of the property or having the opportunity to see the notice.

PART 128–50—SEIZED PERSONAL PROPERTY

Sec.
128–50.000 Scope of part.
128–50.001 Definitions.
128–50.001–1 Seized personal property.

Subpart 128–50.1—Storage and Care of Seized Personal Property

128–50.100 Storage and care.
128–50.101 Inventory records.
128–50.102 Periodic reviews.
128–50.103 Investigation of any discrepancy.

AUTHORITY: 41 CFR 128–1.105.

SOURCE: 43 FR 3279, Jan. 24, 1978, unless otherwise noted.

§ 128–50.000 Scope of part.

This part prescribes the policies for the storage and care of seized personal property; the preparation and maintenance of inventory records of its seized personal property; the conducting of periodic internal reviews; and the investigation of any discrepancy between the inventory records and the actual amount of its seized personal property.

§ 128–50.001 Definitions.

§ 128–50.001–1 Seized personal property.

Personal property for which the Government does not have title but which the Government has obtained custody or control of in accordance with 15 U.S.C. 1177; 18 U.S.C. 924(d), 1955(d), 2513, 3611, 3612, 3615; 19 U.S.C. 1595a; 21 U.S.C. 881; 22 U.S.C. 401; Fed. R. Crim. P. 41(b); 28 CFR 0.86, 0.89, 0.111(j), 3.5, 3.6, 8.1, 8.2, 9a.1, 9a.2; or other statutory authority.

Subpart 128–50.1—Storage and Care of Seized Personal Property

§ 128–50.100 Storage and care.

(a) Each bureau shall be responsible for providing that its seized personal property storage facilities meet the safeguarding standards applicable to the type of property being stored.

(b) Each bureau shall be responsible for performing care on its seized personal property to prevent the unnecessary deterioration of such property. In particular, a bureau preparing a seized vehicle for storage should be at a minimum;

(1) Protect the cooling system from freezing;

(2) Protect the battery by assuring it is properly watered;

(3) Protect the tires by inflating to correct pressure;

(4) Remove all articles found in the vehicle's interior (for example, easily removable radios, tape players, and speakers) and all exterior accessories (for example, wheel covers) that are subject to pilferage and properly store them; and

(5) Shut all windows and lock all doors and compartments that have locks.

§ 128–50.101 Inventory records.

Each bureau shall be responsible for establishing and maintaining inventory records of its seized personal property to ensure that:

(a) The date the property was seized is recorded;

(b) All of the property associated with a case is recorded together under the case name and number;

(c) The location of storage of the property is recorded;

(d) A well documented chain of custody is kept; and

(e) All information in the inventory records is accurate and current.

§ 128–50.102 Periodic reviews.

Each bureau shall be responsible for performing an independent accountability review at least once a year to ensure compliance with this subpart and with the bureau's procedures for the handling, storage, and disposal of its seized personal property. In particular, a bureau conducting a review shall verify that the inventory records are accurate, current, and are being kept in accordance with established inventory procedures.

§ 128–50.103 Investigation of any discrepancy.

(a) Upon discovery of any discrepancy between the inventory records and the bureau's actual amount of seized personal property, a board of survey shall conduct an investigation in accordance with 41 CFR 128–51.1.

(b) If the discrepancy cannot be eliminated and involves a shortage, the bureau shall notify the U.S. attorney in charge of the litigation involving the missing property of the shortage as soon as possible.

(c) If the discrepancy cannot be eliminated and involves an overage, the bureau shall determine if the property has any evidentiary value. If the property does have evidentiary value, the property shall be properly stored and inventoried. If the property does not have any evidentiary value, the bureau shall determine whether the property is forfeitable to the United States, voluntarily abandoned, or abandoned. Proper proceedings shall be commenced as soon as possible to vest title of the forfeitable property in the United States. The voluntarily abandoned and abandoned property shall be kept in custody in accordance with 41 CFR 101–48 and any applicable Justice property management regulations.

CHAPTERS 129–200 [RESERVED]