AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

code of federal regulations

Public Contracts and Property Management

41

CHAPTERS 102 TO 200

Revised as of July 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1997

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1997

For sale by U.S. Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402–9328

Table of Contents

	Page
Explanation	v
Title 41:	
Subtitle C—Federal Property Management Regulations System (Continued):	
Chapters 102—104 [Reserved]	
Chapter 105—General Services Administration	7
Chapter 109—Department of Energy Property Management Regulations	181
Chapter 114—Department of the Interior	271
Chapter 115—Environmental Protection Agency	273
Chapter 128—Department of Justice	275
Subtitle D—Other Provisions Relating to Property Management [Reserved]	
Finding Aids:	
Table of CFR Titles and Chapters	293
Alphabetical List of Agencies Appearing in the CFR	309
Redesignation Table	319
List of CFR Sections Affected	321

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 41 CFR 105–1.000–50 *refers to title 41, part 105–1, section 000–50.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1997), consult the ''List of CFR Sections Affected (LSA),'' which is issued monthly, and the ''Cumulative List of Parts Affected,'' which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1986, consult either the List of CFR Sections Affected, 1949–1963, 1964–1972, or 1973–1985, published in seven separate volumes. For the period beginning January 1, 1986, a ''List of CFR Sections Affected'' is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table II). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES

For a legal interpretation or explanation of any regulation in this volume, contact the issuing agency. The issuing agency's name appears at the top of odd–numbered pages.

For inquiries concerning CFR reference assistance, call 202–523–5227 or write to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

SALES

The Government Printing Office (GPO) processes all sales and distribution of the CFR. For payment by credit card, call 202–512–1800, M–F 8 a.m. to 4 p.m. e.s.t. or fax your order to 202–512–2233, 24 hours a day. For payment by check, write to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. For GPO Customer Service call 202–512–1803.

RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 1997.

THIS TITLE

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT consists of Subtitle A—Federal Procurement Regulations System [Note]; Subtitle B—Other Provisions Relating to Public Contracts; Subtitle C—Federal Property Management Regulations System; Subtitle D is reserved for other provisions relating to property management, Subtitle E—Federal Information Resources Management Regulations System and Subtitle F—Federal Travel Regulation System.

As of July 1, 1985, the text of subtitle A is no longer published in the Code of Federal Regulations. For an explanation of the status of subtitle A, see 41 CFR chapters 1—100 (page 2).

Other government-wide procurement regulations relating to public contracts appear in chapters 50 through 100, subtitle B.

The Federal property management regulations in chapter 101 of subtitle C are government-wide property management regulations issued by the General Services Administration. In the remaining chapters of subtitle C are the *implementing* and *supplementing* property management regulations issued by individual Government agencies. Those regulations which implement chapter 101 are numerically keyed to it.

The Federal Information Resources Management Regulations in chapter 201 of subtitle E and the Federal Travel Regulation System in chapters 301—304 of subtitle F are issued by the General Services Administration.

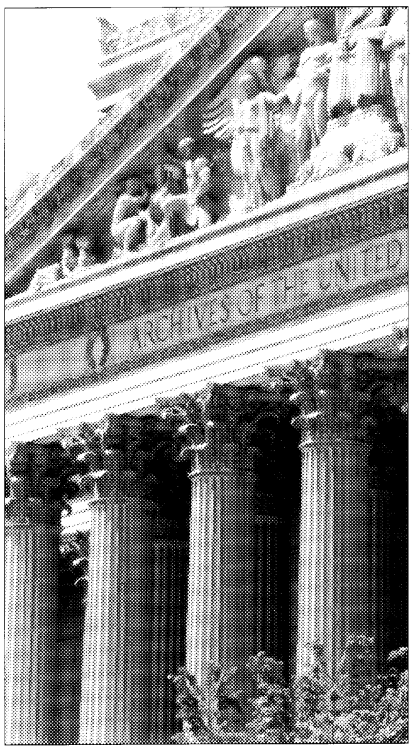
Title 41 is composed of four volumes. The chapters in these volumes are arranged as follows: Chapters 1—100, chapter 101, chapters 102—200, and chapter 201 to end. These volumes represent all current regulations codified under this title of the CFR as of July 1, 1997.

Redesignation tables appear in the finding aids section of the volumes containing chapter 101 and chapters 102 to 200.

For this volume Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Would you like to know. . .

if any changes have been made to the *Code of Federal Regulations* or what documents have been published in the *Federal Register* without reading the *Federal Register* every day? If so, you may wish to subscribe to the *LSA* (List of CFR Sections Affected), the *Federal Register Index,* or both.



LSA

The *LSA* (List of CFR Sections Affected) is designed to lead users of the *Code of Federal Regulations* to amendatory actions published in the *Federal Register*. The *LSA* is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$27 per year.

Federal Register Index

The index, covering the contents of the daily *Federal Register,* is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$25 per year.

A finding aid is included in each publication which lists *Federal Register* page numbers with the date of publication in the *Federal Register.*

Superintendent of Documents Subscription Order Form

Order Processing Code:
***5421**

❑ **YES,** send me the following indicated subscriptions for one year:

____ **LSA (List of CFR Sections Affected),** (LCS) for $27 per year.

____ **Federal Register Index** (FRSU) $25 per year.

The total cost of my order is $ _____
Price is subject to change. International customers please add 25%.

(Includes regular shipping and handling.)

For privacy check box below:

❑ Do not make my name available to other mailers

Check method of payment:

❑ Check payable to Superintendent of Documents

❑ GPO Deposit Account ☐☐☐☐☐☐☐ — ☐

❑ VISA ❑ MasterCard ☐☐☐☐ (expiration date)

Company or personal name

Street address

City, State, ZIP code

Daytime phone with area code

Purchase order No. (optional)

Credit card No. (must be 20 digits)

Thank you for your order!

Authorizing signature 1/97

Mail To: Superintendent of Documents
PO Box 371954
Pittsburgh PA 15250–7954

Fax your orders (202) 512–2250
Phone your orders (202) 512–1800

Title 41—Public Contracts and Property Management

(This book contains chapters 102 to 200)

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM (Continued):

Part

CHAPTERS 102–104 [Reserved]

CHAPTER 105—General Services Administration 105–1

CHAPTER 109—Department of Energy Property Management Regulations 109–1

CHAPTER 114—Department of the Interior 114–51

CHAPTER 115—Environmental Protection Agency 115–1

CHAPTER 128—Department of Justice 128–1

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [Reserved]

Subtitle C—Federal Property Management Regulations System (Continued)

CHAPTERS 102–104 [RESERVED]

CHAPTER 105—GENERAL SERVICES ADMINISTRATION

Part		*Page*
105–1	Introduction	9
105–8	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by General Services Administration	11
105–50	Provision of special or technical services to State and local units of government	22
105–51	Uniform relocation assistance and real property acquisition for Federal and federally-assisted programs	27
105–53	Statement of organization and functions	27
105–54	Advisory committee management	34
105–55	Collection of claims owed the United States	45
105–56	Salary offset for indebtedness of General Services Adminstration employees to the United States	49
105–57	Collection of debts by tax refund offset	54
105–60	Public availability of agency records and informational materials	55
105–62	Document security and declassification	66
105–64	Regulations implementing the Privacy Act of 1974	70
105–67	Sale of personal property	80
105–68	Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)	80
105–69	New restrictions on lobbying	99
105–70	Implementation of the Program Fraud Civil Remedies Act of 1986	111
105–71	Uniform administrative requirements for grants and cooperative agreements with State and local governments	126
105–72	Uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	153
105–735	Standards of conduct	180

PART 105–1—INTRODUCTION

Sec.
105–1.000–50 Scope of part.

Subpart 105–1.1—Regulations System

105–1.100 Scope of subpart.
105–1.101 General Services Administration Property Management Regulations.
105–1.101–50 Exclusions.
105–1.102 Relationship of GSPMR to FPMR.
105–1.104 Publication of GSPMR.
105–1.106 Applicability.
105–1.109 Numbering.
105–1.109–50 General plan.
105–1.109–51 Arrangement.
105–1.109–52 Cross-references.
105–1.110 Deviation.
105–1.150 Citation.

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.

105–8.101 Purpose.
105–8.102 Application.
105–8.103 Definitions.
105–8.104—105–8.109 [Reserved]
105–8.110 Self-evaluation.
105–8.111 Notice.
105–8.112—105–8.129 [Reserved]
105–8.130 General prohibitions against discrimination.
105–8.131—105–8.139 [Reserved]
105–8.140 Employment.
105–8.141—105–8.147 [Reserved]
105–8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.
105–8.149 Program accessibility: Discrimination prohibited.
105–8.150 Program accessibility: Existing facilities.
105–8.150–1 General.
105–8.150–2 Methods.
105–8.150–3 Time period for compliance.
105–8.150–4 Transition plan.
105–8.151 Program accessibility: New construction and alterations.
105–8.152 Program accessibility: Assignment of space.
105–8.153 Program accessibility: Interagency cooperation.
105–8.153–1 General.
105–8.153–2 Requests from occupant agencies.
105–8.154 Program accessibility: Exceptions.
105–8.155—105–8.159 [Reserved]
105–8.160 Communications.
105–8.161—105–8.169 [Reserved]
105–8.170 Compliance procedures.
105–8.170–1 Applicability.
105–8.170–2 Employment complaints.
105–8.170–3 Responsible Official.
105–8.170–4 Filing a complaint.
105–8.170–5 Notification to the Architectural and Transportation Barriers Compliance Board.
105–8.170–6 Acceptance of complaint.
105 8.170–7 Investigation/conciliation.
105–8.170–8 Letter of findings.
105–8.170–9 Filing an appeal.
105–8.170–10 Acceptance of appeals.
105–8.170–11 Hearing.
105–8.170–12 Decision.
105–8.170–13 Delegation.
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.

105–50.000 Scope of part.
105–50.001 Definitions.
105–50.001–1 State.
105–50.001–2 Political subdivision or local government.
105–50.001–3 Unit of general local government.
105–50.001–4 Special-purpose unit of local government.
105–50.001–5 Specialized or technical services.
105–50.001–6 GSA.

Subpart 105–50.1—General Provisions

105–50.101 Purpose.
105–50.102 Applicability.
105–50.103 Policy.
105–50.104 Limitations.
105–50.105 Coordination of requests.
105–50.106 GSA response to requests.

Subpart 105–50.2—Services Available From General Services Administration

105–50.201 Agencywide mission.
105–50.202 Specific services.
105–50.202–1 Copies of statistical or other studies.
105–50.202–2 Preparation of or assistance in the conduct of statistical or other studies.
105–50.202–3 Training.
105–50.202–4 Technical assistance incident to Federal surplus personal property.
105–50.202–5 Data processing services.
105–50.202–6 Communications services.
105–50.202–7 Technical information and advice.

Subpart 105–50.3—Principles Governing Reimbursements to GSA

105–50.301 Established fees.
105–50.302 Special fee schedules.
105–50.303 Cost basis in lieu of fees.
105–50.304 Services provided through revolving funds.
105–50.304a Deposits.
105–50.305 Exemptions.

Subpart 105–50.4—Reports

105–50.401 Reports submitted to the Congress.
105–50.402 Reports submitted to the Office of Management and Budget.

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

Sec.

105–53.100 Purpose.

Subpart A—General

105–53.110 Creation and authority.
105–53.112 General statement of functions.
105–53.114 General statement of organization.
105–53.116 General regulations.
105–53.118 Locations of material available for public inspection.
105–53.120 Address and telephone numbers.

Subpart B—Central Offices

105–53.130 Office of the Administrator.
105–53.130–1 [Reserved]
105–53.130–2 Office of Ethics and Civil Rights.
105–53.130–3 Office of the Executive Secretariat.
105–53.130–4 Office of Small and Disadvantaged Business Utilization.
105–53.131 Office of Inspector General.
105–53.132 GSA Board of Contract Appeals.
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.

105–55.001 Background.
105–55.002 Purpose.
105–55.003 Applicability.
105–55.004 Demand for payment.
105–55.005 Interest, administrative charges, and penalty charges.
105–55.006 Responsibility for collection.
105–55.007 Collection by offset.
105–55.008 Settlement of claims.
105–55.009 Referral for litigation.
105–55.010 Disclosure to credit reporting agencies and referrals to collection agencies.
105–55.011 Credit report.

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.

105–56.001 Scope.
105–56.002 Excluded debts or claims.
105–56.003 Definitions.
105–56.004 Pre-offset notice.
105–56.005 Employee response.
105–56.006 Petition for pre-offset hearing.
105–56.007 Pre-offset oral hearing.
105–56.008 Pre-offset ''paper hearing.''
105–56.009 Written decision.
105–56.010 Deductions.
105–56.011 Non-waiver of rights.
105–56.012 Refunds.
105–56.013 Coordinating offset with another Federal agency.

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.
105–57.001 Purpose.
105–57.002 Applicability and scope.
105–57.003 Administrative charges.
105–57.004 Reasonable attempt to notify.
105–57.005 Notice requirement before offset.
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.

105–60.000 Scope of part.

Subpart 105–60.1—General Provisions

105–60.101 Purpose.
105–60.102 Application.
105–60.103 Policy.
105–60.103–1 Availability of records.
105–60.103–2 Applying exemptions.
105–60.104 Records of other agencies.
105–60.105 Inconsistent directives of GSA superseded.

Subpart 105–60.2—Publication of General Agency Information and Rules in the Federal Register

105–60.201 Published information and rules.
105–60.202 Published materials available for sale to the public.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

105–60.301 General.
105–60.302 Available materials.
105–60.303 Rules for public inspection and copying.
105–60.304 Index.
105–60.305 Fees.
105–60.305–1 Definitions.
105–60.305–2 Scope of section.
105–60.305–3 Record material available without charge.
105–60.305–4 Copy of GSA records available at a fee.
105–60.305–5 Waiver of fee.
105–60.305–6 Searches.
105–60.305–7 Reviews.
105–60.305–8 Prepayment of fees over $250.
105–60.305–9 Form of payment.
105–60.305–10 Fee schedule.
105–60.305–11 Fees for authenticated and attested copies.
105–60.305–12 Administrative actions to improve assessment and collection of fees.

Subpart 105–60.4—Described Records

105–60.401 General.
105–60.402 Procedures for making records available.
105–60.402–1 Submission of requests.
105–60.402–2 Response to initial requests.
105–60.403 Appeal within GSA.
105–60.404 Extension of time limits.

Subpart 105–60.5—Exemptions

105–60.501 Categories of records exempt from disclosure under the FOIA.

Subpart 105–60.6—Subpoenas or Other Legal Demands for Records

105–60.601 Service of subpoena or other legal demand.

AUTHORITY: Sec. 205(c) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486(c); and 5 U.S.C. 552 (Pub. L. 90–23, as amended by Pub. L. 93–502 and Pub. L. 99–570).

SOURCE: 53 FR 1479, Jan. 20, 1988, unless otherwise noted.

§105–60.000 Scope of part.

This part sets forth policies and procedures concerning the availability to the public of records held by the General Services Administration (GSA) with respect to:

(a) Agency organization, functions, decisionmaking channels, and rules and regulations of general applicability,

(b) Agency final opinions and orders, including policy statements and staff manuals,

(c) Operational and other appropriate agency records, and

(d) Agency proceedings.

This part also covers exemptions from disclosure of these records; procedures for the public to inspect and obtain copies of GSA records; and the service of a subpoena or other legal demand with respect to records.

Subpart 105–60.1—General Provisions

§ 105–60.101 Purpose.

Part 105–60 implements the provisions of the Freedom of Information Act, 5 U.S.C. 552 (''FOIA'') (Pub. L. 90–23, which codified Pub. L. 89–487 and amended section 3 of the Administrative Procedure Act, formerly 5 U.S.C. 1002 (1964 ed.); Pub. L. 93–502, popularly known as the Freedom of Information Act Amendments of 1974, as amended by Pub. L. 99–570, the Freedom of Information Reform Act of 1986. This part prescribes procedures by which the public may inspect and obtain copies of GSA records under the FOIA.

§ 105–60.102 Application.

This part applies to all records and informational materials generated, maintained, and controlled by GSA which come within the scope of 5 U.S.C. 552.

§ 105–60.103 Policy.

§ 105–60.103–1 Availability of records.

GSA records are available to the greatest extent possible in keeping with the spirit and intent of the FOIA. GSA will furnish them promptly to any member of the public upon request addressed to the office designated in § 105–60.402–1 at fees specified in § 105–60.305–10. The person making the request need not have a particular interest in the subject matter, nor must that person provide justification for the request. The requirement of the FOIA that records be available to the public refers only to records in being at the date of the request and imposes no obligation on GSA to compile a record including development of a new computer program to respond to a request.

§ 105–60.103–2 Applying exemptions.

GSA may deny a request for a GSA record if it falls within an exemption under the FOIA as outlined in subpart 105–60.5. 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. In the absence of a compelling reason, GSA will disclose a record although it otherwise is subject to exemption.

§ 105–60.104 Records of other agencies.

If GSA receives a request to make available current records that are the primary responsibility of another agency, GSA will refer the request to the agency concerned for appropriate action. GSA will inform the requester that GSA has forwarded the request to the responsible agency.

§ 105–60.105 Inconsistent directives of GSA superseded.

Any policies and procedures in any GSA directive that are inconsistent with the policies and procedures set forth in this part are superseded to the extent of that inconsistency.

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 §105–60.201.

§105–60.202 Published materials available for sale to the public.

Substantive rules of general applicability adopted by GSA as authorized by law which this agency publishes in the FEDERAL REGISTER and which are available for sale to the public are: The General Services Administration Acquisition Regulation (48 CFR Ch. 5) and the Federal Acquisition Regulation (48 CFR Ch. 1); the Federal Property Management Regulations (41 CFR Ch. 101) and the Federal Information Resources Management Regulations (41 CFR Ch. 201). These regulations are available for sale by the Superintendent of Documents in

(a) Daily FEDERAL REGISTER form; and

(b) Code of Federal Regulations form, at prices established by the Government Printing Office.

Subpart 105–60.3—Availability of Opinions, Orders, Policies, Interpretations, Manuals, and Instructions

§105–60.301 General.

GSA makes available for public inspection and copying the materials described under 5 U.S.C. 552(a)(2), which are listed in §105–60.302, and an Index of those materials as described in §105–60.304, at convenient locations and times. Central Office materials are located in Washington, DC; some are also available at GSA regional offices. Each regional office has the materials for its region. All locations provide selected areas for the inspection and copying of documents. Reasonable copying services are furnished at the fees specified in §105–60.305.

§105–60.302 Available materials.

GSA materials available under 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 of policy and interpretations which 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 §105–60.302, are located in the following places:

CENTRAL OFFICE

(GSA Headquarters), Washington, DC. Telephone: 202–535–7788

General Services Administration, 18th and F Streets NW., Library (Room 1033), Washington, DC 20405

REGION 1

Boston, Massachusetts (Comprising the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont). Telephone: 617–565–8100

Business Service Center, General Services Administration (2SB–1), Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, Boston, MA 02222

REGION 2

New York, New York (Comprising the States of New Jersey, New York, the Commonwealth of Puerto Rico, and the Virgin Islands). Telephone 212–264–1234

Business Service Center, General Services Administration (2SB), 26 Federal Plaza, New York, NY 10278

REGION 3

Philadelphia, Pennsylvania (Comprising the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia). Telephone: 215–597–9613

Business Service Center, General Services Administration (3SB), Ninth and Market Streets, Room 5151, Philadelphia, PA 19107

REGION 4

Atlanta, Georgia (Comprising the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). Telephone: 404–331–5103

Business Service Center, General Services Administration (4SB), Richard B. Russell Federal Building, U.S. Courthouse, 75 Spring Street, SW, Room 318, Atlanta, GA 30303

REGION 5

Chicago, Illinois (Comprising the States of Illinois, Indiana, Michigan, Ohio, Minnesota, and Wisconsin). Telephone: 312–353–5383

Business Service Center, General Services Administration (5SB), 230 South Dearborn Street, Chicago, IL 60604

REGION 6

Kansas City, Missouri (Comprising the States of Iowa, Kansas, Missouri, and Nebraska). Telephone: 816–926–7203

Business Service Center, General Services Administration (6SB), 1500 East Bannister Road, Kansas City, MO 64131

REGION 7

Fort Worth, Texas (Comprising the States of Arkansas, Louisiana, New Mexico, Texas, and Oklahoma). Telephone: 817–334–3284

Business Service Center, General Services Administration (7SB), 819 Taylor Street, Room 11A05, Fort Worth, TX 76102

REGION 8

Denver, Colorado (Comprising the States of Colorado, North Dakota, South Dakota, Montana, Utah, and Wyoming). Telephone: 303–236–7409

Business Service Center, General Services Administration (7SB–8), Building 41, Denver Federal Center, Room 145, Denver, CO 80225

REGION 9

San Francisco, California (Comprising the States of Hawaii, California, Nevada, and Arizona). Telephone: 415–974–0523

Business Service Center, General Services Administration (9SB), 525 Market Street, San Francisco, CA 94105

REGION 10

Seattle, Washington (Comprising the States of Alaska, Idaho, Oregon, and Washington). Telephone: 206–931–7956

Business Service Center, General Services Administration (9SB–10), GSA Center, 15th and C Streets, SW, Room 2413, Auburn, WA 98001

NATIONAL CAPITAL REGION

Washington, DC (Comprising the District of Columbia and the metropolitan area). Telephone: 202–472–1804

Business Service Center, General Services Administration (WSB), Seventh and D Streets, SW, Room 1050, Washington, DC 20407

(b) *Time.* The reading rooms or selected areas will be open to the public during the business hours of the GSA office where they are located.

(c) *Copying.* GSA will furnish reasonable copying services at fees specified in § 105–60.305.

(d) *Reading room and selected area rules*—(1) *Age.* GSA will not give permission to inspect materials to a person under 16 years old unless accompanied by an adult who agrees to remain with the minor while the minor uses the materials.

(2) *Handling of materials.* The removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. When requested by a reading room or selected area attendant, a person inspecting materials must present for examination any briefcase, handbag, notebook, package, envelope, book, or other article that could contain GSA informational materials.

(3) *Reproduction services.* The GSA Central Office Library or the Regional Business Service Centers will furnish ''reasonable reproduction'' services for available materials at the fees specified in § 105–60.305.

§ 105–60.304 Index.

GSA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 105–60.302.

§ 105–60.305 Fees.

§ 105–60.305–1 Definitions.

For the purpose of these regulations:

(a) A statute specifically providing for setting the level of fees for particular types of records (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires (as opposed to generally discussing) a Government agency to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available Government information;

(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 a self-sustaining bases 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) 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. Not included in direct cost are overhead expenses such as costs of space, and heating or lighting the facility where the records are stored.

(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. Such activity will be distinguished from ''review'' of material in determining whether the material is exempt from disclosure (see paragraph (e) of this section). Searches may be done manually or by computer using existing programming.

(d) The term *duplication* refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microform, audiovisual materials, or machine-readable documentation. GSA will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

(e) The term *review* refers to the process of examining documents located in response to request that is for commercial use (see paragraph (f) of this section) to determine if any portion of that document is permitted to be withheld and processing any documents for disclosure. See § 105–60.305–7.

(f) The term *commercial-use request* refers to 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. In determining whether a requester properly belongs in this category, GSA will look first at how the requester will use the documents.

(g) The term *educational institution* refers to 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, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term *noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is referenced 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* refers to 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. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

§ 105–60.305–2 Scope of section.

This section 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 Record material available without charge.

GSA records available to the public are displayed in the business service center for that region. Certain material related to bids (excluding construction plans and specifications) and any material displayed are available without charge upon request.

§ 105–60.305–4 Copy of GSA records available at a fee.

GSA will make a record not subject to exemption available at a time and place mutually agreed upon by GSA and the requester. GSA will agree either to

(a) Show the originals to the requester,

(b) Make one copy available at a fee, or

(c) A combination of these alternatives.

In the case of voluminous materials, GSA will make copies as quickly as possible. GSA may make a reasonable number of additional copies for a fee when commercial reproduction services are not available to the requester.

§ 105–60.305–5 Waiver of fee.

(a) Any request for waiver or 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 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 request 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—with a connection between them that is 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 should consider whether the requested information is already in the public domain, either in a duplicative or a substantially identical form. 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 understanding.'' The focus here must be on the contribution to public 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 understanding through the requested disclosure.

(4) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(5) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(b) If the initial request provides insufficient information for the agency to evaluate the request, GSA may ask the requester to furnish additional information. 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.

§ 105–60.305–6 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 involving 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.

§105–60.305–7 Reviews.

(a) GSA may 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 the record is permitted to be withheld in whole or in part; and

(2) Time spent in deleting exempt matter being withheld from records otherwise made available.

(b) GSA will not charge for the time spent in resolving issues of law or policy regarding the application of exemptions.

(c) GSA may not charge for 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. The costs for such a subsequent review would be properly assessable.

(d) GSA will charge only commercial-use requesters for review time.

§105–60.305–8 Prepayment of 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. GSA will also inform the requester that fees for search time will be charged even if the search proves unsuccessful. GSA will not start processing a request until payment is received.

§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.

§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) In computing applicable fees, GSA will consider only the following costs in providing the requester records:

(1) *Review and search fees.*

Manual searches by clerical staff.	$9 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.	$18 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.	$0.10 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 in accordance with §105–60.305–1(b).

(d) Categories of requesters. There are four categories of requesters: Commercial-use; educational and noncommercial scientific institutions; news media; and all other. The fees listed above apply with the following exceptions:

(1) GSA will not charge the requester if the fee is $10 or less as the cost of collection would be 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. This amount would not be billed under the preceding section.

(ii) A request that results in 250 pages of material. The requester in this case would be charged $15.

(3) Noncommercial requesters who are not included under paragraph (d)(2) of this section will be entitled to the first 100 pages (paper copies) of duplication at no cost and 2 hours of search without charge. The term ''search time'' in this context has as its basis, 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) equals the equivalent dollar amount of two hours of the salary of the person performing the 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 2 hours of free search time.

(e) Determining category of requester. GSA may ask the requester to provide additional information at any time to determine what fee category he or she falls under. This applies to all requesters.

§ 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), including disclosure to consumer reporting agencies, use of collection agencies, and assessment of penalties and administrative costs, where appropriate, to encourage payment.

(c) *Charges for unsuccessful search.* The agency may assess charges for time spent searching for the records even if the agency fails to locate the records or if the records located are exempt from disclosure.

(d) *Notifying requester of charges over $25.* If charges are likely to exceed $25, GSA will notify the requester and obtain, in writing, assurance of the requester's willingness to pay the estimated fee. The requester shall also be offered an opportunity to modify his or her request to reduce the fee. GSA will not start processing the request until assurance of payment is received.

(e) *Aggregating requests.* When the agency reasonably believes that a requester, or group of requesters acting in concert, is attempting to break a request down 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 made within a 30-day period are made to avoid fees.

(f) *Advance payments.* (1) See § 105–60.305–8 regarding prepayment of fees for FOIA requests.

(2) Where a requester has previously failed to pay a fee charged in a timely

fashion (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 above, or demonstrate that he or she has, in fact, paid the fee, and to make an 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.

(3) If GSA acts under paragraphs (f)(1) and (2) of this section, the administrative time limits in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals form initial denial plus permissible time extensions) will begin only after it has received the fee payments described above.

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, 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. Although the burden of reasonable description of the records rests with the requester, GSA will assist in identification.

(b) Upon receipt of a request that does not reasonably describe the records requested, GSA may contact the requester to seek a more specific description. The 10-workday time limit set forth in §105–60.402–2 will not start until the official identified in §105–60.402–1 receives a request reasonably describing the records.

§105–60.402 Procedures for making records available.

This section sets forth initial procedures for making records available when they are requested.

§105–60.402–1 Submission of requests.

For records located in the GSA Central Office, the requester should submit a request in writing to the GSA FOIA Officer, General Services Administration (CAIR), Washington, DC 20405. For records located in the GSA regional offices, the requester should submit a request to the FOIA Officer for the relevant region, at the address listed in §105–60.303(a), with the exception of Region 9. Requests for Region 9 should be sent to the following address: General Services Administration (9AA), 525 Market St., 28th Floor, San Francisco, CA 94105. Requests should include the words ''Freedom of Information Act Request'' prominently marked on both the face of the request letter and the envelope. The 10-workday time limit for agency decisions set forth in §105–60.402–2 begins with receipt of a request in the office of the appropriate official identified in this section, unless the provisions under §105–60.305–12(d) and (f) apply. Failure to include the words ''Freedom of Information Act Request'' or to sumbit a request to the official identified in this section will result in processing delays. A requester who has questions concerning an FOIA request may consult the GSA FOIA Officer, General Services Administration (CAIR), 18th and F Streets, NW., Washington, DC 20405, (202) 535–7983.

§105–60.402–2 Response to initial requests.

GSA will respond to an initial FOIA request within 10 workdays (that is, excluding Saturdays, Sundays, and legal public holidays) after receipt of a request by the office of the appropriate official specified in §105–60.402–1. This letter should state the agency's decision with respect to disclosure or nondisclosure of the requested records. If the records to be disclosed are not provided with the initial letter, the records will be sent as soon as possible thereafter. In unusual circumstances, GSA will inform the requester of the agency's need to take 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, may appeal that decision within GSA. The requester must direct the appeal to the GSA FOIA Officer, General Services Administration (CAIR), Washington,

DC 20405, regardless of whether the denial being appealed was made in the Central Office or in a regional office.

(b) The GSA FOIA Officer must receive an appeal no later than 30 calendar days after receipt by the requester of the initial denial of access.

(c) The requester must appeal in writing and include a brief statement of the reasons he or she thinks GSA should release the records and enclose copies of the initial request and denial. The appeal letter should 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 an appeal to make a determination with respect to the appeal. The 20-workday time limit shall not begin until the GSA FOIA Officer receives the appeal.

(d) A requester who has received a denial of an appeal may seek judicial review of GSA's decision 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 and 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 demanded 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 the agency having substantial subject-matter interest therein; or

(4) The need to consult with the submitter of the requested information.

(b) If necessary, more than one extension of time may be taken. However, the total extension of time shall not exceed 10 workdays with respect to a particular request. The extension may be divided between the initial and appeal stages or within a single stage. GSA will provide a written notice to the requester of any extension of time limits.

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 criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute, other than the Government in the Sunshine Act, provided that the statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue of (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 that are 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; and

(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.

(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 and implementing regulations, part 105–64, or if disclosure would cause no demonstrable harm to any public or private interest.

(d) Whenever a request is made which involves access to records described in § 105–60.501(a)(7)(i) and

(1) The investigation or proceeding involves a possible violation of criminal law, and

(2) There is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) 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.

(e) 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.

(f) Whenever a request is made which 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 as not subject to the requirements of this section.

Subpart 105–60.6—Subpoenas or Other Legal Demands for Records

§ 105–60.601 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand for the production of records held by GSA should be addressed to the General Counsel, General Services Administration (L), Washington, DC 20405, with respect to GSA Central office records; to the appropriate Regional Counsel, for records in GSA regional offices; or to the Administrator of General Services.

(b) The Administrator, the General Counsel, Deputy General Counsels, Associate General Counsels, the Chairman of the Board of Contract Appeals, Inspector General, and, with respect to

records in a GSA regional office, the Regional Administrator and Regional Counsel are the only GSA employees authorized to accept service of a subpoena duces tecum or other legal demand on behalf of GSA.

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

Sec.
105–64.000 Scope of part.
105–64.001 Purpose.
105–64.002 Definitions.

Subpart 105–64.1—General Policy

105–64.101 Maintenance of records.
105–64.101–1 Collection and use.
105–64.101–2 Standards of accuracy.
105–64.101–3 Rules of conduct.
105–64.101–4 Safeguarding systems of records.
105–64.101–5 Inconsistent directives of GSA superseded.
105–64.102 Records of other agencies.
105–64.103 Subpoenas and other legal demands.

Subpart 105–64.2—Disclosure of Records

105–64.201 Conditions of disclosure.
105–64.202 Procedures for disclosure.
105–64.203 Accounting of disclosure.

Subpart 105–64.3—Individual Access to Records

105–64.301 Access procedures.
105–64.301–1 Form of requests.

105–64.301–2 Special requirements for medical records.
105–64.301–3 Granting access.
105–64.301–4 Denials of access.
105–64.301–5 Appeal of denial of access within GSA.
105–64.301–6 Geographic composition, addresses and telephone numbers of regional Administrative Services Division directors.
105–64.302 Fees.
105–64.302–1 Records available at a fee.
105–64.302–2 Additional copies.
105–64.302–3 Waiver of fee.
105–64.302–4 Prepayment of fees over $25.
105–64.302–5 Form of payment.
105–64.302–6 Reproduction fee schedule.

Subpart 105–64.4—Requests to Amend Records

105–64.401 Submission of requests to amend records.
105–64.402 Review of requests to amend records.
105–64.403 Approval of requests to amend.
105–64.404 Denial of requests to amend.
105–64.405 Agreement to alternative amendments.
105–64.406 Appeal of denial of request to amend a record.
105–64.407 Statements of disagreement.
105–64.408 Judicial review.

Subpart 105–64.5—Reporting New Systems and Altering Existing Systems

105–64.501 Reporting requirement.
105–64.502 FEDERAL REGISTER notice of establishment of new system or alteration of existing system.
105–64.503 Effective date of new systems of records or alteration of an existing system of records.

Subpart 105–64.6—Exemptions

105–64.601 General exemptions.
105–64.602 Specific exemptions.

Subpart 105–64.7—Assistance and Referrals

105–64.701 Requests for assistance and referral.

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)

Subpart 105–68.1—General

Sec.
105–68.100 Purpose.

105–68.105 Definitions.
105–68.110 Coverage.
105–68.115 Policy.

Subpart 105–68.2—Effect of Action

105–68.200 Debarment or suspension.
105–68.205 Ineligible persons.
105–68.210 Voluntary exclusion.
105–68.215 Exception provision.
105–68.220 Continuation of covered transactions.
105–68.225 Failure to adhere to restrictions.

Subpart 105–68.3—Debarment

105–68.300 General.
105–68.305 Causes for debarment.
105–68.310 Procedures.
105–68.311 Investigation and referral.
105–68.312 Notice of proposed debarment.
105–68.313 Opportunity to contest proposed debarment.
105–68.314 Debarring official's decision.
105–68.315 Settlement and voluntary exclusion.
105–68.320 Period of debarment.
105–68.325 Scope of debarment.

Subpart 105–68.4—Suspension

105–68.400 General.
105–68.405 Causes for suspension.
105–68.410 Procedures.
105–68.411 Notice of suspension.
105–68.412 Opportunity to contest suspension.
105–68.413 Suspending official's decision.
105–68.415 Period of suspension.
105–68.420 Scope of suspension.

Subpart 105–68.5—Responsibilities of GSA, Agency and Participants

105–68.500 GSA responsibilities (information dissemination).
105–68.505 GSA responsibilities.
105–68.510 Participants' responsibilities.

Subpart 105–68.6—Drug-Free Workplace Requirements (Grants)

105–68.600 Purpose.
105–68.605 Definitions.
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 NOTES (1): For additional information, see related documents published at 53 FR 19160, May 26, 1988, and 53 FR 34474, Sept. 6, 1988.

(2): For nomenclature changes affecting this part, see 53 FR 19198 and 19204, May 26, 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

Sec.
105–69.100 Conditions on use of funds.
105–69.105 Definitions.
105–69.110 Certification and disclosure.

Subpart B—Activities by Own Employees

105–69.200 Agency and legislative liaison.
105–69.205 Professional and technical services.
105–69.210 Reporting.

Subpart C—Activities by Other Than Own Employees

105–69.300 Professional and technical services.

Subpart D—Penalties and Enforcement

105–69.400 Penalties.
105–69.405 Penalty procedures.
105–69.410 Enforcement.

Subpart E—Exemptions

105–69.500 Secretary of Defense.

Subpart F—Agency Reports

105–69.600 Semi-annual compilation.
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:

Authorized for Local Reproduction
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 _____

Authorized for Local Reproduction
Standard Form - LLL-A

PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

105–70.000 Scope.
105–70.001 Basis.
105–70.002 Definitions.
105–70.003 Basis for civil penalties and assessments.
105–70.004 Investigation.
105–70.005 Review by the reviewing official.
105–70.006 Prerequisites for issuing a complaint.
105–70.007 Complaint.
105–70.008 Service of complaint.
105–70.009 Answer.
105–70.010 Default upon failure to file an answer.
105–70.011 Referral of complaint and answer to the ALJ.
105–70.012 Notice of hearing.
105–70.013 Parties to the hearing.
105–70.014 Separation of functions.
105–70.015 Ex parte contacts.
105–70.016 Disqualification of reviewing official or ALJ.
105–70.017 Rights of parties.
105–70.018 Authority of the ALJ.
105–70.019 Prehearing conferences.
105–70.020 Disclosure of documents.
105–70.021 Discovery.
105–70.022 Exchange of witness lists, statements, and exhibits.
105–70.023 Subpoena for attendance at hearing.
105–70.024 Protective order.
105–70.025 Fees.
105–70.026 Form, filing and service of papers.
105–70.027 Computation of time.
105–70.028 Motions.
105–70.029 Sanctions.
105–70.030 The hearing and burden of proof.
105–70.031 Determining the amount of penalties and assessments.
105–70.032 Location of hearing.
105–70.033 Witnesses.
105–70.034 Evidence.
105–70.035 The record.
105–70.036 Post-hearing briefs.
105–70.037 Initial decision.
105–70.038 Reconsideration of initial decision.
105–70.039 Appeal to Authority Head.
105–70.040 Stays ordered by the Department of Justice.
105–70.041 Stay pending appeal.
105–70.042 Judicial review.
105–70.043 Collection of civil penalties and assessments.
105–70.044 Right to administrative offset.
105–70.045 Deposit in Treasury of United States.
105–70.046 Compromise or settlement.
105–70.047 Limitations.

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

Sec.
105–71.100 Purpose and scope of this part.
105–71.101 Scope of §§ 105–71.100 through 105–71.105.
105–71.102 Definitions.
105–71.103 Applicability.
105–71.104 Effect on other issuances.
105–71.105 Additions and exceptions.

Subpart 105–71.11—Pre-Award Requirements

105–71.110 Forms for applying for grants.
105–71.111 State plans.
105–71.112 Special grant or subgrant conditions for ''high-risk'' grantees.

Subpart 105–71.12—Post-Award Requirements/Financial Administration

105–71.120 Standards for financial management systems.
105–71.121 Payment.
105–71.122 Allowable costs.
105–71.123 Period of availability of funds.
105–71.124 Matching or cost sharing.
105–71.125 Program income.
105–71.126 Non-Federal audit.

Subpart 105–71.13—Post-Award Requirements/Changes, Property, and Subawards

105–71.130 Changes.
105–71.131 Real property.
105–71.132 Equipment.
105–71.133 Supplies.
105–71.134 Copyrights.
105–71.135 Subawards to debarred and suspended parties.
105–71.136 Procurement.
105–71.137 Subgrants.

Subpart 105–71.14—Post-Award Requirements/Reports, Records, Retention, and Enforcement

105–71.140 Monitoring and reporting program performance.
105–71.141 Financial reporting.
105–71.142 Retention and access requirements for records.
105–71.143 Enforcement.
105–71.144 Termination for convenience.

Subpart 105–71.15—After-the-Grant Requirements

105–71.150 Closeout.
105–71.151 Later disallowances and adjustments.
105–71.152 Collection of amounts due.

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 of 1984 (31 U.S.C. 7501–7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee 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 Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. 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.

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

Subpart 105–72.1—General

Sec.
105–72.100 Purpose.
105–72.101 Definitions.
105–72.102 Effect on other issuances.
105–72.103 Deviations.
105–72.104 Subawards.

Subpart 105–72.2—Pre-Award Requirements

105–72.200 Purpose.
105–72.201 Pre-award policies.
105–72.202 Forms for applying for Federal assistance.
105–72.203 Debarment and suspension.
105–72.204 Special award conditions.
105–72.205 Metric system of measurement.
105–72.206 Resource Conservation and Recovery Act.
105–72.207 Certifications and representations.

Subpart 105–72.30—Post-Award Requirements/Financial and Program Management

105–72.300 Purpose of financial and program management.
105–72.301 Standards for financial management systems.
105–72.302 Payment.
105–72.303 Cost sharing or matching.
105–72.304 Program income.
105–72.305 Revision of budget and program plans.
105–72.306 Non-Federal audits.
105–72.307 Allowable costs.
105–72.308 Period of availability of funds.

Subpart 105–72.40—Post-Award Requirements/Property Standards

105–72.400 Purpose of property standards.
105–72.401 Insurance coverage.
105–72.402 Real property.
105–72.403 Federally-owned and exempt property.
105–72.404 Equipment.
105–72.405 Supplies and other expendable property.
105–72.406 Intangible property.
105–72.407 Property trust relationship.

Subpart 105–72.50—Post-Award Requirements/Procurement Standards

105–72.500 Purpose of procurement standards.
105–72.501 Recipient responsibilities.
105–72.502 Codes of conduct.
105–72.503 Competition.
105–72.504 Procurement procedures.
105–72.505 Cost and price analysis.
105–72.506 Procurement records.
105–72.507 Contract administration.
105–72.508 Contract provisions.

Subpart 105–72.60—Post-Award Requirements/Reports and Records

105–72.600 Purpose of reports and records.
105–72.601 Monitoring and reporting program performance.
105–72.602 Financial reporting.
105–72.603 Retention and access requirements for records.

Subpart 105–72.70—Post-Award Requirements/Termination and Enforcement

105–72.700 Purpose of termination and enforcement.
105–72.701 Termination.
105–72.702 Enforcement.

Subpart 105–72.80—After-the-Award Requirements

105–72.800 Purpose.
105–72.801 Closeout procedures.
105–72.802 Subsequent adjustments and continuing responsibilities.
105–72.803 Collection of amounts due.
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 nonconstruction 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 shall be subject to the audit requirements contained in OMB Circular A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, ''Audits of State and Local Governments.''

(c) Hospitals not covered by the audit provisions of 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.

§ 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.

CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER A—GENERAL

Part		*Page*
109–1	Introduction	183

SUBCHAPTER B [RESERVED]

SUBCHAPTER C—DEFENSE MATERIALS

109–14	National Defense Stockpile	194

SUBCHAPTER D [RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

109–25	General	195
109–26	Procurement sources and programs	198
109–27	Inventory management	199
109–28	Storage and distribution	208
109–29	Federal specifications and standards	209
109–30	Federal Catalog System	209

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

109–35	Telecommunications	211
109–36	ADP management	212

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

109–38	Motor equipment management	215
109–39	Interagency motor vehicle pools	231
109–40	Transportation and traffic management	232

SUBCHAPTER H—UTILIZATION AND DISPOSAL

109–42	Property rehabilitation services and facilities	238
109–43	Utilization of personal property	238
109–44	Donation of personal property	244
109–45	Sale, abandonment, or destruction of personal property	245

Part		Page
109–46	Utilization and disposal of personal property pursuant to exchange/sale authority	252
109–48	Utilization, donation, or disposal of abandoned and forfeited personal property	252
109–50	Programmatic disposal of DOE property	253

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

109–51	Loans of industrial plant equipment from the defense industrial plant equipment center	259

SUBCHAPTER J [RESERVED]

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

109–60	Management of government property in the possession of off-site contractors	260

SUBCHAPTER A—GENERAL

PART 109–1—INTRODUCTION

Sec.
109–1.000–50 Scope of part.

Subpart 109–1.1—Regulation System

109–1.100–50 Scope of subpart.
109–1.100–51 Definitions.
109–1.102–50 Department of Energy Property Management Regulations.
109–1.103–50 DOE–PMR Bulletins.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.104–1–50 Publication.
109–1.104–2–50 Distribution.
109–1.106–50 Applicability of Federal and Departmental regulatory issuances.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR.
109–1.109–50 Numbering of DOE–PMR.
109–1.110–50 Deviation procedures.

Subpart 109–1.50—Personal Property Management Program

109–1.5000 Scope of subpart.
109–1.5001 Policy.
109–1.5002 Property management program objectives.
109–1.5003 Definitions.
109–1.5004 Delegation of authority.
109–1.5005 Responsibilities.
109–1.5005–1 The Director of Procurement and Assistance Management.
109–1.5005–2 The Departmental Property Management Officer.
109–1.5005–3 The Director of Administration.
109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.
109–1.5005–5 Heads of field offices.
109–1.5005–6 Organizational Property Management Officer.
109–1.5005–7 Contracting officers.

Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Definition.
109–1.5102 Official use of property.
109–1.5103 Maximum use of property.
109–1.5104 Loan of property.
109–1.5105 Borrowing of property.
109–1.5106 Control of property.
109–1.5106–1 Identification marking of property.
109–1.5106–2 Segregation of property.
109–1.5106–3 Physical protection of property.
109–1.5106–4 Control of sensitive items.
109–1.5106–5 Physical inventories.
109–1.5107 Retirement of property.
109–1.5108 Property belonging to others.
109–1.5109 Employee participation.
109–1.5110 Use of non-government-owned property.
109–1.5148 Personal property management reports.

Subpart 109–1.52—Contractors' Personal Property Management Program

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Designation of property administrator.
109–1.5203 Review and approval of contractor's property management system.
109–1.5204 Property management appraisals.
109–1.5205 Reporting.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25565, June 21, 1984, unless otherwise noted.

§ 109–1.000–50 Scope of part.

This part establishes a system by which the Department of Energy (DOE) implements and supplements the Federal Property Management Regulations (FPMR) (41 CFR chapter 101) issued by the General Services Administration (GSA).

Subpart 109–1.1—Regulation System

§ 109–1.100–50 Scope of subpart.

This subpart establishes the Department of Energy Property Management Regulations (DOE–PMR), Chapter 109 of the Federal Property Management Regulations System (FPMR) (41 CFR chapter 109).

§ 109–1.100–51 Definitions.

As used in this chapter the following definitions apply:

(a) *Heads of field offices* are the heads of any Departmental office located outside the Washington, D.C. metropolitan area. In addition, the Federal Energy Regulatory Commission, Headquarters, shall be considered a field office for purposes of these regulations. See § 109–1.5005–4 concerning the responsibilities of the Director, Office of Procurement

Operations, Procurement and Assistance Management Directorate, Headquarters.

(b) *Direct operations* means operations conducted by DOE personnel.

(c) *Contractor* means a management and operating contractor, as that term is defined in the Federal Acquisition Regulation (FAR) 48 CFR 17.601 as supplemented by the Department of Energy Acquisition Regulations (DEAR) 48 CFR 917.604–70, and such other contractors as may be designated by the Procurement Executive or head of the contracting activity as subject to the provisions of this chapter.

§ 109–1.102–50 Department of Energy Property Management Regulations.

The DOE–PMR, established in this part, implement and supplement the FPMR provisions governing the acquisition, utilization, management, and disposal of personal property. The DOE–PMR are issued to establish uniform property management policies and, as necessary, procedures for the Department of Energy. (See 109–1.106–50(d) and (e) with respect to management of property in the possession of other DOE contractors and financial assistance recipients).

§ 109–1.103–50 DOE–PMR Bulletins.

A DOE–PMR Bulletin will be used to disseminate information not affecting policy or to clarify instructions in actions required by the FPMR or the DOE–PMR.

§ 109–1.104–50 Publication and distribution of DOE–PMR.

§ 109–1.104–1–50 Publication.

The DOE–PMR will be published in the FEDERAL REGISTER and will appear in the Code of Federal Regulations as chapter 109 of title 41, Public Contracts and Property Management. Looseleaf publications will be distributed to DOE offices.

§ 109–1.104–2–50 Distribution.

The responsibilities and authorities for distribution of publications in the FPMR series are as follows:

(a) The Director of Procurement and Assistance Management—

(1) Designates an official to serve as liaison with GSA;

(2) Establishes and maintains distribution patterns; and

(3) Processes DOE–PMR Handbooks for final approval and publication.

(b) The Director of Administration—

(1) Distributes publications in accordance with established patterns;

(2) Maintains a stock of FPMR and DOE–PMR publications for furnishing additional copies; and

(3) Provides additional support services as required.

(c) Heads of field offices—

(1) Provide the Director of Procurement and Assistance Management with field organization requirements;

(2) Forward one-time requests for additional copies of centrally distributed publications to the Office of Administrative Services, Headquarters (MA–234.2); and

(3) Distribute publications to their offices and contractors in accordance with established distribution patterns.

§ 109–1.106–50 Applicability of Federal and Departmental regulatory issuances.

(a) The FPMR and this DOE–PMR apply to all direct operations.

(b) Unless otherwise provided in the appropriate part or subpart, contracting officers shall assure that the FPMR and DOE–PMR are applied to contractors.

(c) The FPMR and DOE–PMR, as appropriate, shall be used by contracting officers in the administration of contracts, and in the review, approval, or appraisal of such contractor operations.

(d) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulations, part 45 (48 CFR chapter 1) and in the DOE Acquisition Regulations, part 945 (48 CFR chapter 9).

(e) Regulations for the management of property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) and the Financial Assistance Procedures Manual, DOE Order 4600.1.

§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 shall include regulations deemed necessary to understand basic and significant Departmental property management policies and procedures 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 policies and procedures contained in 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 as implemented and supplemented from time to time;

(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.

§109–1.109–50 Numbering of DOE–PMR.

(a) Where the DOE–PMR implement the FPMR, the implementing part, subpart, section or subsection of the DOE–PMR will be numbered and captioned, to the extent possible, to correspond to the applicable part, subpart, section, or subsection of the FPMR.

(b) Where the DOE–PMR supplement the FPMR, the numbers 50 and up will be assigned to the parts, subparts, sections or subsections involved.

§109–1.110–50 Deviation procedures.

(a) Requests for deviations from the FPMR and the DOE–PMR shall be forwarded to the Headquarters organization having functional responsibility, as follows:

(1) Part 109–35—Director, Division of Telecommunications.

(2) Part 109–40—Assistant Secretary for Defense Programs.

(3) All other parts—Director of Procurement and Assistance Management.

(b) In individual cases, deviations from the FPMR and DOE–PMR may be authorized by the Headquarters organization having functional responsibility. A supporting statement for each individual deviation, which indicates briefly the nature of the deviation, the reasons for such special action, and the Headquarters approval, shall be maintained by the Headquarters organization concerned.

(c) In classes of cases, requests for deviations from the FPMR and the DOE–PMR shall be accompanied by a supporting statement. Requests shall be considered on an expedited basis and coordination with Headquarters organizations will be obtained as appropriate. Requests involving the FPMR will be considered jointly by DOE and GSA, unless, in the judgment of the Headquarters organization having functional responsibility, circumstances preclude such joint effort. In such cases, the organization having functional responsibility will approve such class deviations as determined to be necessary and notify GSA.

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 effective property management program in DOE.

§109–1.5001 Policy.

It is DOE policy that a program for the management of Government personal property (sometimes referred to as personal property or as property) shall be established and maintained to meet program needs economically and efficiently and in accordance with applicable Federal statutes and Federal agency regulations.

§ 109–1.5002 Property management program objectives.

The objectives of the DOE property management program are to provide—

(a) A system for effectively managing Government personal property in the custody or possession of DOE organizations and DOE contractors; and

(b) Uniform principles, policies, standards, and procedures for economical and efficient management of Government personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

§ 109–1.5003 Definitions.

As used in these regulations, the following definitions apply:

(a) ''Government personal property'' means property of any kind or type which is Government-owned or -rented or -leased from commercial sources in the custody of DOE or its contractors except real property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 ''Control and Accountability of Nuclear Materials, Basic Principles'' apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section II of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

(b) ''Personal property management'' means the development, implementation, and administration of policies, programs and procedures for effective and economical acquisition, receipt, storage, issue, use, control, physical protection, care and maintenance, determination of requirements and maintenance of related operating records, and disposal, as appropriate, for Government personal property exclusive of the accounting records.

§ 109–1.5004 Delegation of authority.

(a) The Secretary of Energy has delegated to the Assistant Secretary, Management and Administration, on a nonexclusive basis, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(b) The Assistant Secretary, Management and Administration has delegated to the Director, Procurement and Assistance Management, the authority to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors.

(c) The Director of Administration and Heads of field offices are delegated appropriate procurement authority by memorandum from the Director, Procurement and Assistance Management, to acquire, manage, and dispose of personal property held by the Department for official use by its employees or contractors, consistent with policies, standards, and procedures as contained in this regulation.

§ 109–1.5005 Responsibilities.

§ 109–1.5005–1 The Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management provides direction and general supervision in the development and administration of an effective and efficient personal property management system for the Department, to include:

(a) The establishment of Department-wide policies, standards, systems, regulations, and procedures in accordance with applicable laws and regulations and sound management practice; and

(b) The review, evaluation, and improvement of personal property management programs, functions, operations, and procedures in the Department.

§ 109–1.5005–2 The Departmental Property Management Officer.

The Departmental Property Management Officer shall be the Director, Property and Equipment Management Division, Headquarters. This individual is responsible for developing, promoting, monitoring, administering, coordinating, and evaluating the Department-wide personal property management program, and shall—

(a) Develop and maintain Departmental personal property policies, standards and procedures;

(b) Develop and publish Departmental regulations relating to personal property management;

(c) Represent the Department with GSA and other agencies on matters relating to personal property management;

(d) Submit Departmental personal property management reports to GSA, the Congress and other Federal agencies, as required;

(e) Provide staff assistance to Departmental organizations performing personal property management functions;

(f) Conduct reviews and appraisals of Departmental personal property management functions; and

(g) Prepare the Departmental aircraft and motor vehicle budget.

§ 109–1.5005–3 The Director of Administration.

The Director of Administration—

(a) Manages personal property for DOE direct operations located in the Washington, D.C. metropolitan area with the exception of the Federal Energy Regulatory Commission.

(b) Exercises responsibilities cited in § 109–1.5005–5 as they relate to functions under his/her management control; and

(c) Appoints an Organizational Property Management Officer to be responsible for his/her organization's personal property management program.

§ 109–1.5005–4 Director, Office of Procurement Operations, Procurement and Assistance Management.

The Director, Office of Procurement Operations, Procurement and Assistance Management Directorate, Headquarters, shall exercise the responsibilities of the head of a field office as set forth in these regulations with respect to the management of property held under contracts for which his/her office is responsible.

§ 109–1.5005–5 Heads of field offices.

Heads of field offices shall—

(a) Appoint an Organizational Property Management Officer who shall be responsible for the organization's personal property management program; and

(b) Establish and administer a personal property management program within the organization which will provide for—

(1) Effective management of Government personal property in the custody of DOE and its contractors, consistent with applicable laws and regulations;

(2) Application of personal property management regulations, instructions, standards, procedures, and practices as prescribed in the FPMR and DOE–PMR;

(3) Planning and scheduling of property requirements to assure that supplies and equipment are readily available to satisfy program needs while minimizing operating costs and inventory levels;

(4) Development and maintenance of complete and accurate inventory control and accountability record systems;

(5) Maximum utilization of available property for official purposes;

(6) Proper care and securing of property to include storage, handling, preservation, and preventative maintenance;

(7) Identification of property excess to the needs of the organization, and proper reutilization of this property within the Department and reporting to GSA for transfer, donation, or disposal;

(8) The development and submission of required property management reports;

(9) Assuring that DOE employees and contractors are aware that acts of theft, illegal possession, and unlawful destruction or use of Government personal property are violations punishable under Federal law, notwithstanding disciplinary measures taken under administrative policy;

(10) Assuring that DOE employees and contractors are aware that every user of Government personal property is responsible for its physical protection and for reporting the loss, theft, destruction or damage of property;

(11) The conducting of periodic management reviews within the activity to assure compliance with prescribed policies, regulations, standards, and procedures; and

(12) The establishment of equipment and supply subsidiary records and accounts to support general ledger control accounts for personal property.

§ 109–1.5005–6 Organizational Property Management Officer.

The Organizational Property Management Officer (OPMO)—

(a) Provides advice and guidance for the organization's personal property mangement program;

(b) Coordinates and conducts the activities of the organization's personal property management program;

(c) Serves as principal contact point for the organization in matters concerning personal property management; and

(d) Represents the organization, or designates a representative, to attend Department meetings concerning personal property management issues, and acts as liaison with other DOE offices or other Federal agencies in property management matters affecting their organization.

§ 109–1.5005–7 Contracting officers.

Contracting officers shall—

(a) Assure that all contracts that involve property contain the applicable DEAR property clause; and

(b) Assure that contractors' personal property management systems are reviewed, appraised, and approved as provided for in § 109–1.52.

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 Government personal property.

§ 109–1.5101 Definition.

Sensitive items are those items of property, regardless of value, 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, and portable power tools.

§ 109–1.5102 Official use of property.

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, or (b) as otherwise authorized by law and approved by the Director of Administration and heads of field offices for their respective organizations, or by the contracting officer for contractor-held property.

§ 109–1.5103 Maximum use of property.

Property management practices shall assure that the best possible use is made of property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE effectively. Adequate staff review shall be made of operating programs to coordinate and plan future supply activities and to assure against overstocking, waste, and improper use of property.

§ 109–1.5104 Loan of property.

(a) Property which would otherwise be out of service for temporary periods (and not excess) may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. Such loans shall be covered by written agreements or memorandum receipts which shall include all terms of the loan (such as loan period, delivery time, method of payment of transportation, point of delivery and return, conditions of use, responsibilities of the borrower for condition of property on return, inspection requirements, etc.) that may be required to ensure proper control and protect DOE's interest. The loan period should not exceed one year, but may be renewed.

(b) Requests for loan by foreign Governments and other foreign organizations shall be submitted through the Property and Equipment Management Division (MA–422) to the Assistant Secretary for International Affairs for approval, with a copy to the cognizant Headquarters program office.

§ 109–1.5105 Borrowing of property.

(a) DOE organizations and contractors are encouraged to borrow 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 loans (one year or less). Borrowing of Government 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 the terms of the transaction.

(b) In determining whether it is practical and economical to borrow 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.

§109–1.5106 Control of property.

§109–1.5106–1 Identification marking of property.

(a) Government property will be identified as U.S. Government property subject to the criteria below. Marking may be accomplished by any means which will produce a permanent marking and which is most adaptable to the particular item of property.

(1) Capitalized and sensitive property shall be marked as U.S. Government property and by numbering for control purposes.

(2) Other property susceptible to unauthorized personal use, such as hand tools, should be considered for marking as U.S. Government property, and by numbering for control purposes.

(b) Property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement. Such Government property in the custody of contractors should not be commingled with contractor-owned property unless it is determined by the contracting officer to be advantageous to the Government.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE, or additional markings may be added to indicate such disposal.

§109–1.5106–2 Segregation of property.

Ordinarily, provisions shall be made for the contractor to keep Government property segregated from contrator-owned property. Commingling of Government-owned and contractor-owned 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 being Government property.

§109–1.5106–3 Physical protection of property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, marking of tools, and perimeter fencing shall be established as required to prevent loss, theft, or unauthorized movement of property from the premises on which such property is located.

§109–1.5106–4 Control of sensitive items.

(a) Controls shall be established over the acquisition, storage, issue, use, and return of sensitive items of property.

(b) Items on capital equipment which are also designated as sensitive items will be controlled as sensitive items and as capital equipment.

(c) A list of sensitive items shall be maintained for property considered to require special controls before and after issue. Determination of specific sensitive items shall be a matter for management judgment at individual locations, taking into consideration the dollar value of the items to be controlled and costs of administration.

(d) Written procedures shall be established for control of sensitive items, to include:

(1) Approval of purchase requisitions or issue documents at an appropriate supervisory level prior to acquisition or issue;

(2) Establishment of administrative controls in the central receiving and warehousing department. Such controls should include extraordinary physical protection, guidance for receiving and warehousing personnel as to procedures for protection, and a current listing of sensitive items;

(3) Establishment and maintenance of appropriate property management records;

(4) Requirements 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 prompt reporting of apparent loss, damage or destruction;

(iii) Requirement to return items in condition beyond economical repair to an appropriate organizational element;

(iv) Requirement for promptly reporting changes in custody or extended loans;

(v) Reminder of prohibition of use for other than official purposes, and penalties for misuse;

(vi) Requirement for effective 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; and

(vii) A clear definition of the extent of responsibility or financial accountability, depending on contractor policy.

(7) Requirement for annual physical inventory;

(8) Requirement for prompt and thorough investigation of losses;

(9) Requirement for an employee transfer or termination checkout procedure and examination and adjustment of records; and

(10) Other property management procedures which, through experience and independent audit, have demonstrated effective physical and administrative control over sensitive items.

§ 109–1.5106–5 Physical inventories.

(a) Physical inventories of property shall be conducted at all DOE and contractor locations, consistent with approved procedures and generally accepted accounting procedures.

(b) The preferred method of performing physical inventories is by the use of personnel other than the property staff or custodian of the property. Where staffing restraints or other considerations require, the inventory may be performed by the property staff or the custodian.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE organization and contractor. The Director of Administration and heads of field offices shall approve the procedures for their respective DOE operation. The appropriate field organization staff shall review and approve contractor's procedures.

(d) The taking of a physical inventory will be observed, or follow-on audits made, by independent representatives, e.g., finance, audit, or property staffs, to the extent deemed necessary to assure that the procedures are being followed and the results are accurate. These observations or audits should be documented and the documentation should be 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 shall be as follows:

(1) *Moveable capital equipment*—not less frequently than every two years.

(2) *Sensitive items*—not less frequently than every twelve months.

(3) *Stores inventories*—not less frequently than every twelve months.

(4) *Precious metals*—not less frequently than every six months.

(g) A physical inventory shall be performed at intervals more frequently than required in § 109–1.5106–5(f) whenever 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) Special inventories may be required on certain types of property or on certain items or kinds of items when circumstances arise requiring such action, such as audits or special reviews.

(i) The results of physical inventories shall be reconciled with the property records and, except for non-capital sensitive items, with the financial control accounts in accordance with Chapter

VI of the DOE Accounting Practices and Procedures Handbook.

(j) Physical inventories of capital equipment and stores inventories may be conducted by the ''statistical sampling'' method in lieu of the normal ''wall-to-wall'' method. In addition, the ''inventory by exception'' method may be used for capital equipment physical inventories. However, the system and procedures for taking physical inventories by these methods must be fully documented and approved by the Director of Administration and by heads of field offices for their respective organizations.

§109–1.5107 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 loss, theft, destruction, abandonment, or damage. The retirement work order shall be reviewed by the property management staff and signed by the responsible official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report.

§109–1.5108 Property belonging to others.

Procedures shall be established which will provide for adequate attention to the management of property belonging to other Federal agencies in the possession or custody of DOE organizations or its contractors.

§109–1.5109 Employee participation.

Full advantage shall be taken of suitable methods for stimulating employee participation and cooperation in carrying out an effective and economical program of property management. Some examples of effective methods are (a) indoctrination of new employees and others who have access to or use property, (b) the use of incentive award plans to promote interest, and (c) the use of visual aids such as posters, plant publications, outdoor signboards, and displays to keep employees informed as to progress and to remind them of their responsibilities.

§109–1.5110 Use of non-government-owned property.

Non-government-owned personal property shall not be installed in, affixed to, or otherwise made a part thereof, of any Government-owned personal or real property. This restriction does not apply to the use and installation of privately owned decorative items or memorabilia to the workplace, provided that the structure or safety of the facility is not thereby degraded.

§109–1.5148 Personal property management reports.

Property management reports to be submitted to the Property and Equipment Management Division (MA–422) are listed below.

Report title	Due at DOE headquarters	References	Form No.
(a) Reports required of all offices.			
(1) Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority.	Nov. 30	FPMR 101–46.407, DOE–PMR 109–46.407.	Letter.
(2) Excess Personal Property Furnished to Non-Federal Recipients.	Nov. 15	FPMR 101–43.4701(c), DOE–PMR 109–43.4701(c).	Letter.
(3) Contractor Property Holdings	Oct. 31	DOE–PMR 109–1.5205	Letter.
(4) Precious Metals	Oct. 31	FPMR 101–42.301–1, DOE–PMR 109–42.301–1.	Letter.
(5) Agency Report of Motor Vehicle Data	Oct. 31	FPMR 101–38.1, DOE–PMR 109–38.1	SF 82.
(6) Unused Passenger Vehicle Replacement Authorizations.	June 15	DOE–PMR 109–38.5101–5(b)	Letter.
(7) Report of Exempted Motor Vehicles	On request	FPMR 101–38.607, DOE–PMR 109–38.607.	Letter.
(8) Annual Forecast for Acquisition of Fuel Efficient Passenger Automobiles.	Dec. 1	Executive Order 12375, DOE–PMR 109–38.1306.	Letter.
(9) Aircraft Cost and Operations	Dec. 31	DOE–PMR 109–38.5212(a)	DOE F 4450.1.

Report title	Due at DOE headquarters	References	Form No.
(b) Reports required from field offices not reporting through the DOE Financial Information System.			
(1) Utilization and Disposal of Excess and Surplus Personal Property.	Nov. 15	DOE Order 2200, Chapter XI	CR 85–2.
(2) Summary of Excess Property Received from Other Agencies.		DOE Order 2200, Chapter XI	CR 85–4.
(3) Supply Activity Report	Nov. 15	DOE–PMR 109–25.48	GSA F 1473.
(4) Direct Labor Costs of Stores Warehousing Activities.	Nov. 15	DOE Order 2200, Chapter XI	CR 85–7.
(5) Completed Plant and Equipment	Oct. 31	DOE Order 2200, Chapter XI	CR 84–32.
(6) Equipment Held for Future Projects	Oct. 31	DOE Order 2200, Chapter XI	CR 57.

Subpart 109–1.52—Contractors' Personal Property Management Program

§ 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, review and appraisal of a contractor's program and system for the management of Government personal property.

§ 109–1.5201 Policy.

(a) Contractors shall establish, maintain, and administer a program for the effective management of Government personal property consistent with the terms of the contract and directives for the contracting officer.

(b) Contractors shall maintain their personal property management systems in writing on a current basis.

(c) Contractors shall require those subcontractors provided Government property under the prime contract to establish and maintain a system for the management of such property. Procedures for assuring effective property management shall be included in the contractor's property control system. As a minimum, a subcontractor's system for control of Government property shall provide for the following:

(1) Adequate records.

(2) Controls over acquisitions.

(3) Identification as Government property.

(4) Physical inventories.

(5) Proper care, maintenance, and protection.

(6) Reporting, redistribution, and disposal of excess and surplus property.

(7) A retirement work order procedure to account for property that is worn out, lost, stolen, destroyed, abandoned, or damaged beyond economical repair.

(8) Periodic reporting, including physical inventory results and, at least annually, the total acquisition cost of Government property in the possession of the subcontractor.

(9) An internal surveillance system, including periodic reviews, to ensure that property is being managed in accordance with established procedures.

§ 109–1.5202 Designation of property administrator.

The contracting officer shall designate a property administrator to be responsible for property administration. This property administrator will be delegated the authority to assist the contracting officer on all matters involving the Government-owned personal property held by the contractor. If a property administrator has not been designated, the contracting officer is the property administrator.

§ 109–1.5203 Review and approval of contractor's property management system.

(a) A contractor's property management system should be reviewed by the property administrator within one year after the execution date of the contract, and the property administrator shall approve or disapprove the system in writing. If the system is disapproved, the property administrator shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of the corrective actions.

(b) The purpose of the review is to determine whether the system will adequately protect, maintain, utilize, and

dispose of Government personal property in accordance with the FPMR, the DOE–PMR, and applicable DOE directives.

(c) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

(d) Any change to the approved property management system made after the original review and approval should be reviewed by the property administrator at the earliest possible time. Such changes should then be approved/disapproved by the property administrator as appropriate.

§ 109–1.5204 Property management appraisals.

(a) At least every two years (with a maximum period of three years) after the execution date of the contract, the property administrator shall make an appraisal of the property management operation of the contractor. The appraisal may be based on a formal in-depth appraisal on-site or a series of formal appraisals of the functional segments of the contractor's property management system to determine if the contractor is managing the Government personal property in its custody in accordance with its previously approved policies and procedures, the FPMR, the DOE–PMR, and applicable DOE directives. The property administrator shall bring deficiencies in the contractor's property management operation to the attention of the contractor's management for correction.

(b) Appropriate follow-up will be made by the property administrator to ensure that corrective actions are taken.

§ 109–1.5205 Reporting.

Within 30 days after the end of each fiscal year, heads of field offices shall report the following information to the Director, Property and Equipment Management Division (MA–422):

(a) Name and address of each contractor.

(b) Contract number.

(c) Date contractor's property management system was approved.

(d) Date of most current appraisal of contractor's property management system, and status of the system (satisfactory or unsatisfactory).

SUBCHAPTER B [RESERVED]

SUBCHAPTER C—DEFENSE MATERIALS

PART 109–14—NATIONAL DEFENSE STOCKPILE

Sec.
109–14.000 Scope of part.

Subpart 109–14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

109–14.103–1–50 Exceptions to reporting.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§ 109–14.000 Scope of part.

This part implements and supplements FPMR Part 101–14, National Defense Stockpile.

[49 FR 25570, June 21, 1984]

Subpart 109–14.1—Transfer of Strategic and Critical Materials Excess to Agency Needs to the National Defense Stockpile

§ 109–14.103–1–50 Exceptions to reporting.

The following materials excess to the needs of a DOE organization or contractor shall be reported to the DOE pool instead of to GSA:

(a) Precious metals, which include gold, silver, and the platinum family (See § 109–43.313–54).

(b) Lead (See § 109–43.313–57).

[49 FR 25570, June 21, 1984]

SUBCHAPTER D [RESERVED]

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 109–25—GENERAL

Sec.
109–25.000–50 Scope of subchapter.
109–25.001–50 Scope of part.

Subpart 109–25.1—General Policies

109–25.100 Use of Government personal property and nonpersonal services.
109–25.101–1–50 Definitions.
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.
109–25.110–4 Recordkeeping responsibilities.
109–25.113 Leasing of motor vehicles.

Subpart 109–25.3—Use Standards

109–25.302 Office furniture, furnishings, and equipment.
109–25.302–1 Executive type office furniture and furnishings.
109–25.302–2–50 Filing cabinets and equipment.
109–25.302–3 Electric typewriters.
109–25.302–4 Figuring machines.
109–25.302–6 Electronic office machines.
109–25.304 Additional systems and equipment for passenger motor vehicles.
109–25.304–50 Communications equipment exemption.
109–25.350 Use of furnishings and household goods in Government personnel quarters.
109–25.351 Furnishing of Government clothing and individual equipment to employees.

Subpart 109–25.4—Replacement Standards

109–25.401–50 Replacement approvals.

Subpart 109–25.48—Reports

109–25.4800 Scope of subpart.
109–25.4800–50 Applicability.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25571, June 21, 1984, unless otherwise noted.

§109–25.000–50 Scope of subchapter.

This subchapter implements and supplements FPMR Subchapter E, Supply and Procurement.

§109–25.001–50 Scope of part.

This part implements and supplements FPMR Part 101–25, General, and provides cross-references to the DOE Acquisition Regulations (DEAR) where appropriate.

Subpart 109–25.1—General Policies

§109–25.100 Use of Government personal property and nonpersonal services.

The Director of Administration and heads of field offices for their respective organizations shall ensure that the provisions of FPMR 101–25.100 are enforced to restrict the use of Government property/services to officially designated activities.

§109–25.101–1–50 Definitions.

As used in this subpart, the following definitions apply:

(a) *Equipment* consists of those items of nonexpendable personal property having an anticipated service life of one year or more regardless of use or source of funding.

(b) *Equipment pool* is a formally designated collection of equipment, generally functionally associated, which is available for loan or temporary use. The pool may be a physical collection of equipment or may be a record system which provides identification, location and availability information on equipment available for loan or temporary use.

(c) *Equipment in storage* is all equipment not in use, whether stored in formal storage areas, stored in or adjacent to work areas, held for future projects, or retained in standby or abandoned facilities.

§109–25.104 Acquisition of office furniture and office machines.

In making a determination as to whether requirements can be met through the utilization of already owned furniture and office machines as

contemplated in FPMR § 101–25.104, reasonable efforts shall be made to determine whether such items are available from other DOE organizations and contractors within a reasonable transport distance. Such efforts shall include direct inquiries and shall not be limited to a review of available property circularized in accordance with § 109–43.311–1–50.

§ 109–25.109 Laboratory and research equipment.

(a) The provisions of FPMR 101–25.109 and this section shall apply to all types of personal property, including office furniture and office machines, in addition to laboratory and research equipment.

(b) The provisions of FPMR 101–25.109 and this section apply to all DOE field organizations and contractors, and are not limited to Federal laboratories.

§ 109–25.109–1 Identification of idle equipment.

(a) See § 109–25.109(b).

(b) As a minimum, management walk-through inspections shall be scheduled to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property. The frequency of management walk-through inspections may vary with the operation or area involved. A report of walk-throughs conducted, including participants, areas covered, findings, recommendations, and results achieved shall be submitted to the head of the laboratory or other facility involved. Equipment identified as idle and unneeded shall be redeployed, reassigned, placed in equipment pools or declared excess, as appropriate.

(c) In accordance with FPMR § 101–25.109–1(c), members of management walk-through inspection teams should be appointed by the head of the DOE or contractor facility.

(d) Heads of field offices and contracting officers shall periodically review walk-through procedures and practices of organizations under their jurisdiction to evaluate their effectiveness. This review should include actual walk-through inspections of representative DOE or contractor facilities.

§ 109–25.109–2 Equipment pools.

(a) [Reserved]

(b) In accordance with FPMR § 101–25.109–2(b), equipment pools shall be established where practicable to obtain optimum utilization of equipment. The number and types of pools to be established will depend upon local circumstances. In addition to those provided in FPMR § 101–25.109–2, factors to be considered are types of equipment, number and location of potential users and distances involved.

(c) In accordance with FPMR § 101–25.109–2(c), surveys of equipment holdings should be conducted periodically to determine those items which are suitable for pooling. Criteria for placing an item in a pool should include (but not be limited to) the following: The item is suitable for use by more than one individual or group; its use is intermittent rather than full time; it has a degree of portability; and it has sufficient cost or value to merit controlling. It is anticipated that items pooled would vary from one activity to another due to local conditions, and each activity should develop its own criteria for items to be pooled. Items to be considered for pooling include (but are not limited to) certain types of measuring and recording equipment, pumps, electric motors, photographic equipment, portable tools, microscopes, portable radios, power supplies, amplifiers, business machines, radiation detection instruments, and construction and automotive equipment. Where feasible, equipment pools should be combined with existing calibration and maintenance services to foster use and control of pooled equipment.

(d) Records of usage shall be maintained to permit the evaluation of need for quantities and types of equipment in pools. Reviews of usage should be conducted periodically (at least annually) to eliminate items which are no longer required. Heads of field offices shall require DOE and contractor facilities to submit to them annually the report on the use and effectiveness of equipment pooling required by FPMR § 101–25.109–2(d).

(e) Heads of field offices and contracting officers shall require periodic independent reviews of equipment pool

operations as required by FPMR §101–25.109–2(e).

§109–25.110–4 Recordkeeping responsibilities.

In accordance with FPMR 101–25.110–4, heads of field offices shall establish procedures for promptly identifying and locating all tires whether in storage or in use on vehicles so that tire recall notices may be acted upon expeditiously.

§109–25.113 Leasing of motor vehicles.

See DEAR 908.11 and FPMR §§101–26.501–9 and 101–39.601 for additional guidance concerning the leasing of motor vehicles.

Subpart 109–25.3—Use Standards

§109–25.302 Office furniture, furnishings, and equipment.

(a) The criteria contemplated in FPMR §101–25.302 shall be established by the Director of Administration and heads of field offices for their respective DOE operations, consistent with FPMR §101–25.302–1 and this subpart. Office furniture, furnishings, and equipment shall be limited to that required for immediate needs, considering such factors as ordering lead time, potential emergency needs and economical ordering quantities. Requirements shall be met to the fullest extent practicable and economical from available excess or by rehabilitation or repair.

(b)–(c) [Reserved]

(d) Contractors should be encouraged to limit executive-type furniture and furnishings to contractor personnel who organizationally are in positions that are similar or comparable to DOE positions authorized to use executive type office furniture as provided in FPMR §101–25.302–1, when such action will effect economy without decreasing efficiency.

§109–25.302–1 Executive type office furniture and furnishings.

The Director of Administration and heads of field offices for their respective organizations are authorized to make the determination contemplated by FPMR §101–25.302–1.

§109–25.302–2 Filing cabinets and equipment.

In addition to the use standards prescribed in FPMR §101–25.302–2, Departmental policies, standards, procedures, and guidelines for the files management program is contained in DOE Order 1324.3.

§109–25.302–3 Electric typewriters.

The Director of Administration and heads of field offices for their respective organizations shall establish policies, procedures, and standards for the use of electric typewriters as contemplated in FPMR §101–25.302–3, and are authorized to approve exceptions to the criteria contained in that section.

§109–25.302–4 Figuring machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of figuring machines as contemplated in FPMR §101–25.302–4.

§109–25.302–6 Electronic office machines.

The Director of Administration and heads of field offices for their respective organizations shall establish standards for the use of electronic office machines as contemplated in FPMR §101–25.302–6.

§109–25.304 Additional systems and equipment for passenger motor vehicles.

(a) If an item is determined to be essential and the guidelines in FPMR §101–25.304 cannot be met, or the required item is not shown in Federal Standard 122, requisitions, accompanied by supporting justifications, shall be submitted to the Property and Equipment Management Division (MA–422), for further coordination with the Commissioner, Federal Supply Service, General Services Administration, prior to acquisition.

(b) See FPMR §101–26.501, ''Purchase of new motor vehicles,'' and DEAR 908.7101–2, ''Consolidated purchase of new vehicles by General Services Administration.''

§ 109–25.304–50 Communications equipment exemption.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of § 109–25.304. Communications equipment may be acquired and installed in motor vehicles operated by DOE and its contractors after approval by the Director of Administration and heads of field offices for their respective organizations.

§ 109–25.350 Use of furnishings and household goods in Government personnel quarters.

The Director of Administration and heads of field offices for their respective organizations have the authority to authorize the use of furnishings and household goods in Government personnel quarters.

§ 109–25.351 Furnishing of Government clothing and individual equipment to employees.

(a) Government-owned clothing and individual equipment may be furnished employees under the circumstances indicated below. Care should be exercised to avoid the acquisition and furnishing of clothing and individual equipment to be fitted to an employee who may soon be separated from service or permanently assigned to other duties. This section does not apply to provision of uniforms or uniform allowances under the Federal Employees Uniform Allowances Act of 1954, as amended.

(b) Special clothing and individual equipment for the protection of personnel from physical injury or occupational disease may be furnished employees.

(c) Articles of clothing and individual equipment may be furnished employees when the items are such that the employee could not reasonably be required to furnish them as a part of their personal clothing and equipment necessary to enable them to perform the regular duties of the position to which they are assigned or for which services were engaged.

Subpart 109–25.4—Replacement Standards

§ 109–25.401–50 Replacement approvals.

The Director of Administration and heads of field offices for their respective organizations are authorized to approve replacement of office machines, furniture, and materials handling equipment under the conditions cited in FPMR Subpart 101–25.4.

Subpart 109–25.48—Reports

§ 109–25.4800 Scope of subpart.

This subpart supplements information concerning the reporting of supply management data to GSA as contained in FPMR §§ 101–25.48 and 101–25.49.

§ 109–25.4800–50 Applicability.

The provisions of FPMR Subparts 101–25.48 and 101–25.49 and this subpart apply only to those DOE direct operations and contractors controlling Government-owned stores inventories. However, based on an agreement with GSA, the DOE Supply Activity Report is prepared at Headquarters from supply management data available in DOE's financial reports and is sent to GSA by the Property and Equipment Management Division (MA–422). Therefore, no additional reports are required from those field organizations or contractors reporting under the DOE financial reporting system. Those activities with stores operations which do not report under the DOE financial reporting system shall submit Supply Activity Reports to the Property and Equipment Management Division (MA–422) by November 15 for inclusion in the Departmental report.

PART 109–26—PROCUREMENT SOURCES AND PROGRAMS

Sec.
109–26.000 Scope of part.
109–26.050 Applicability.

Subpart 109–26.2—Federal Requisitioning System

109–26.203 Activity address codes.

Subpart 109–26.4—Purchase of Items From Federal Supply Schedule Contracts

109–26.406–1 General.

Subpart 109–26.5—GSA Procurement Programs

109–26.501 Purchase of new motor vehicles.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25573, June 21, 1984, unless otherwise noted.

§ 109–26.000 Scope of part.

This part implements and supplements FPMR Part 101–26, Procurement Sources and Programs.

§ 109–26.050 Applicability.

FPMR Part 101–26 and this part are applicable to contractors to the extent that Government supply sources are made available. For DOE policy on the use of Government supply sources by contractors, see DEAR Subpart 970.51.

Subpart 109–26.2—Federal Requisitioning System

§ 109–26.203 Activity address codes.

In accordance with FPMR § 101–26.203, the Property and Equipment Management Division (MA–422) has been designated the DOE point of contact with GSA for matters concerning activity address codes. DOE organizations shall designate a point of contact who shall coordinate all matters concerning activity address codes with the DOE point of contact.

Subpart 109–26.4—Purchase of Items from Federal Supply Schedule Contracts

§ 109–26.406–1 General.

The Director of Administration and heads of field offices for their respective organizations may authorize the use of U.S. Government National Credit Cards in accordance with FPMR § 101–26.406–1. See FPMR §§ 101–38.12 and 109–38.12 for information on the assignment of billing address code numbers and the control of U.S. Government National Credit Cards.

Subpart 109–26.5—GSA Procurement Programs

§ 109–26.501 Purchase of new motor vehicles.

In addition to the provisions of FPMR § 101–26.501, DEAR 908.7101 contains DOE requirements concerning the purchase of new motor vehicles, and DEAR 908.11 contains the DOE requirements concerning the leasing of motor vehicles.

PART 109–27—INVENTORY MANAGEMENT

Sec.
109–27.000 Scope of part.
109–27.001–50 Definitions.

Subpart 109–27.1—Stock Replenishment

109–27.102–2 Guidelines.

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 Scope of subpart.
109–27.5002 Objectives.
109–27.5003 Stores inventory turnover ratio.
109–27.5004 Stock control.
109–27.5004–1 General.
109–27.5004–2 Construction inventories.
109–27.5005 Guide levels for construction inventories.
109–27.5006 Sub-stores.
109–27.5007 Shop, bench, cupboard or site stock.
109–27.5008 Stores catalogs.
109–27.5009 Physical inventories.
109–27.5009–1 Procedures.
109–27.5009–2 Inventory adjustments.
109–27.5010 Control of drug substances and potable alcohol.
109–27.5011 Containers returnable to vendors.
109–27.5012 Identification marking of metals and metal products.
109–27.5012–1 General.

109–27.5012–2 Exception.
109–27.5012–3 Federal standards applicable to marking.

Subpart 109–27.51—Management of Equipment Held for Future Projects

109–27.5100 Scope of subpart.
109–27.5101 Definition.
109–27.5102 Objective.
109–27.5103 Records.
109–27.5104 Storage.
109–27.5105 Justification and review procedures.
109–27.5106 Field organization review.
109–27.5107 Utilization.

Subpart 109–27.52—Management of Spare Equipment

109–27.5200 Scope of subpart.
109–27.5201 Definition.
109–27.5202 Exclusions.
109–27.5203 Management policy.

Subpart 109–27.53—Management of Precious Metals

109–27.5300 Scope of subpart.
109–27.5301 Definition.
109–27.5302 Policy.
109–27.5303 Precious metals control officer.
109–27.5304 Practices and procedures.
109–27.5304–1 Acquisitions.
109–27.5304–2 Designation of custodians.
109–27.5304–3 Physical protection and storage.
109–27.5304–4 Perpetual inventory records.
109–27.5304–5 Physical inventories.
109–27.5304–6 Stock issue.
109–27.5304–7 Control by using organization.
109–27.5305 Management reviews and audits.
109–27.5306 Precious metals pool.
109–27.5306–1 Purpose and operation.
109–27.5306–2 Withdrawals.
109–27.5306–3 Returns.
109–27.5306–4 Withdrawals/returns forecasts.
109–27.5306–5 Assistance.
109–27.5307 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: 49 FR 25573, June 21, 1984, unless otherwise noted.

§ 109–27.000 Scope of part.

This part implements and supplements FPMR Part 101–27, Inventory Management, but excludes atomic weapons or byproducts and source or special nuclear materials as defined in the Atomic Energy Act of 1954, as amended, enriched uranium in stockpile storage, and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

§ 109–27.001–50 Definitions.

As used in this part the following definitions apply:

(a) *Construction inventories* are supplies, materials and parts held for exclusive use on construction projects.

(b) *Economic order quality (EOQ)* means the size of the order which produces a level at which the combined costs of procuring and carrying inventory are at a minimum.

(c) *Expensed inventories* are items for which the cost is charged to operations and are not under financial control.

(d) *Inventories* are stocks of stores, construction, special reactor and other special materials, supplies and parts used in support of DOE programs.

(e) *Inventory level*, usually expressed in the number of months supply on hand based on anticipated usage, is the amount of supplies authorized to be on hand and due-in less any amount due-out.

(f) *Inventory management* means the effective 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.

(g) *Other special materials* include precious metals and other rare materials having a very high monetary value in relation to volume or weight, special barrier materials, and any others that have been specifically approved by the DOE Controller.

(h) *Physical inventory* means the process of counting the quantities of items on hand and reconciling quantities

counted with the quantities shown on control records.

(i) *Quantity control* means the management of inventories through control of levels, determination of requirements, and replenishment of stock.

(j) *Safety stock* is that portion of inventories under stock control carried for protection against stock depletion due to an increase in demand or when lead time is greater than anticipated.

(k) *Shop, bench, cupboard or site stock* is a collection or store of materials located at or near the point of use.

(l) *Special reactor materials* include special materials approved for research and for use in reactors but not generally available through the usual channels in sufficient quantity because of limited commercial production applications.

(m) *Standardization* is the reduction of stores inventories to the least practicable variety of sizes, shapes and materials compatible with program needs.

(n) *Stock record* is a device for collecting, storing, and providing historical data on recurring transactions for each line item of inventory. The stock record of a line item may be a visible register of transactions recorded by hand or by machine for that item, or it may be the input, output, stored data, or the corresponding print-out of such data representing transactions on the item in an electronic data processing system.

(o) *Stores catalog* means a listing of stock items for use in requisitioning supplies and materials.

(p) *Sub-store* is 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.

Subpart 109–27.1—Stock Replenishment

§ 109–27.102–2 Guidelines.

Procedures and practices shall provide for replenishment of stock items having recurring demands to minimize costs involved. When considered more suitable, contractors may use other generally accepted approaches to EOQ.

Subpart 109–27.2—Management of Shelf-Life Materials

§ 109–27.202 Applicability.

Procedures and practices shall provide for managing shelf-life materials to minimize loss and ensure maximum use prior to deterioration. When considered more suitable, contractors may use other generally accepted approaches to the management of shelf-life items.

Subpart 109–27.3—Maximizing Use of Inventories

§ 109–27.302 Applicability.

Procedures and practices shall provide for maximizing use of inventories. When considered more suitable, 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.

Procedures and practices shall provide for eliminating from inventory items that can be obtained more economically from readily available sources on a timely basis. When considered more suitable, contractors may use other generally accepted approaches to determine which items should be retained in inventory.

Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

§ 109–27.5001 Scope of subpart.

This subpart supplements FPMR Part 101–27 by providing additional policies, principles and guidelines for the economical and efficient management of inventories in support of DOE programs.

§ 109–27.5002 Objectives.

Necessary inventories shall be established and maintained at reasonable levels, consistent with program requirements. They shall be managed and controlled in the most practicable and economical manner consistent with

program needs, applicable laws and regulations and the following objectives:

(a) Provide materials and supplies as needed to meet DOE requirements.

(b) Maintain reasonable inventory levels.

(c) Provide adequate safeguards for protection.

(d) Maintain adequate quantity controls for effective management over all inventories, including those not under financial controls.

(e) Assure maximum efficient utilization and avoid waste.

(f) Maintain an economical operation.

(g) Standardize inventories to the greatest extent practicable.

§ 109–27.5003 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 (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. However, it is recognized that extenuating operating circumstances may preclude the achievement of such objectives.

§ 109–27.5004 Stock control.

§ 109–27.5004–1 General.

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.

§ 109–27.5004–2 Construction inventories.

Stock control from construction inventories shall be maintained by the regular checking of individual items to assure that the quantities ordered plus amounts on hand do not exceed current job requirements. To test the effectiveness of such checks, they should be supplemented with DOE reviews of inventory items on a selective basis at approximately the 25 percent, 50 percent, and 75 percent construction completion stages. Undelivered portions of purchase orders, which these checks and reviews indicate are not needed to complete the project, should be canceled.

§ 109–27.5005 Guide levels for construction inventories.

To ensure that inventories maintained for construction programs and activities are reasonable, the following standards are established as guides (variations may be used where it is established by field organizations that they will more effectively or economically assure that inventory levels are held to the amount required to complete the construction project):

(a) Ordinary construction materials and supplies readily available from commercial sources, and not available as Government excess, permit phasing of deliveries and cancellation of undelivered quantities that may prove excess to project requirements. The onhand inventory of such materials generally should not exceed a three or four months supply at the anticipated usage rates.

(b) Ordinary construction materials and supplies readily obtainable from Government excess should be acquired only in the amounts estimated to complete the construction project.

(c) Items obtainable only by special manufacture or fabrication should be limited to the estimates of requirements to complete the project as determined from project plans and specifications, except as outlined in (d) below.

(d) Inventory levels in excess of estimates to complete the project should be confined to items so unusual in character or unique to the DOE project that they are obtainable only by special manufacture and will be required for maintenance purposes or for operation of the completed plant.

§ 109–27.5006 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 substores 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.

§ 109–27.5007 Shop, bench, cupboard or site stock.

(a) 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. 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.

(b) Care shall be exercised to prevent excessive accumulation of inventories at such points. As a control measure, requisitions should be screened against issue data as reflected in stock records at the supply point. Also, work orders, retirement notices, minor construction projects, maintenance programs, and research and experimental projects, involving removal and dismantling should be reviewed and screened to prevent excessive inventories at point of use. However, the most effective control at point of use may be effected by administrative action through visual examination of quantities on hand, and close supervisory control and training of persons who requisition materials and supplies.

§ 109–27.5008 Stores catalogs.

A suitable stores catalog for customer use in requisitioning stores items 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. Revisions to the catalog should be made at reasonable intervals.

§ 109–27.5009 Physical inventories.

§ 109–27.5009–1 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.

§ 109–27.5009–2 Inventory adjustments.

(a) 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 echelon 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 approval.

(b) Such inventory adjustment reports, when properly approved, support adjustments to the stock records and debits and credits to the financial inventory accounts. Adjustment reports shall be retained on file for inspection and review.

§ 109–27.5010 Control of drug substances and potable alcohol.

(a) The term ‘‘controlled substance’’ means any drug or substance which has been assigned a ‘‘Bureau of Controlled Substance Code Number’’ pursuant to 21 CFR part 1308–Schedule of Controlled Substances.

(b) 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.

(c) Effective procedures and practices shall provide for the management and physical security of hypodermic needles to prevent illegal use. Controls shall include supervisory approval for issue, storage in locked repositories, and the rendering of the needles useless upon disposal.

§ 109–27.5011 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.

§ 109–27.5012 Identification marking of metals and metal products.

§ 109–27.5012–1 General.

Metals and metal products shall be identification 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 the 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 jobbers or other vendors when circumstances warrant.

§ 109–27.5012–2 Exception.

Exception 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.

§ 109–27.5012–3 Federal standards applicable to marking.

The Federal standards listed below can be obtained from the General Services Administration, Federal Supply Service (3 FRI), Washington, D.C. 20407.

(a) Federal Standard 182A(2) ''Identification Marking of Nickel and Nickel Base Alloys.''

(b) Federal Standard 183B ''Continuous Identification Marking of Iron and Steel Products.''

(c) Federal Standard 184A ''Identification Marking of Aluminum, Magnesium and Titanium.''

(d) Federal Standard 185 ''Continuous Marking of Copper and Copper Base Alloy Mill Products.''

Subpart 109–27.51—Management of Equipment Held for Future Projects

§ 109–27.5100 Scope of subpart.

This subpart provides policies, principles and guidelines to be used in the management of equipment held for future projects.

§ 109–27.5101 Definition.

Equipment held for future projects (EHFFP) is equipment that is being retained, based on approved justifications, for a known future use, or for a potential use in planned projects. This classification excludes spare equipment retained as backup for equipment in service or equipment placed in equipment pools (classified as ''In Service''), spare and other equipment constituting a part of the facilities in standby (classified as ''Standby''), excess equipment, and equipment classified as ''Plant and Equipment Changes in Progress''.

§ 109–27.5102 Objective.

The objective of the ''equipment held for future projects'' 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 which is economically justifiable for retention, considering costs of replacement, storage, obsolescence, deterioration, or future availability, that it be made available for use by others, and that equipment no longer needed be promptly excessed.

§ 109–27.5103 Records.

Records of all EHFFP shall be maintained by the holding organization. Included shall be 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.

§ 109–27.5104 Storage.

EHFFP should be stored in warehouse space designated for that purpose. When such space cannot be made available, such equipment may be stored in storage yards or other areas with due consideration to the type of property and protection required.

§ 109–27.5105 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 initial classification of equipment held for future projects shall be reviewed at a level of management one echelon above that of the individual making the initial determination.

(c) Retention of EHFFP must be rejustified annually to ensure that original justifications remain valid. These rejustifications will be supported with sufficient detail to support retention.

(d) Annual rejustifications for retention of EHFFP for longer than one year shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the equipment as held for future projects. EHFFP retained for periods longer than three years should be approved by the head of the DOE field office or his designee.

§ 109–27.5106 Field organization review.

Heads of field offices and contracting officers shall conduct periodic reviews to ensure the validity of justifications for retaining EHFFP. These reviews should include onsite surveys of a representative sample of equipment in this classification.

§ 109–27.5107 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. Procedures shall be established to provide for—

(a) Distribution within the holding organization of lists of EHFFP to acquisition offices (or some other central screening office) and potential users for screening against requirements prior to acquisition; and

(b) Exchange of lists of EHFFP which can be made available for loan between organizations involved in the same or similar programs.

Subpart 109–27.52—Management of Spare Equipment

§ 109–27.5200 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

§ 109–27.5201 Definition.

Spare equipment is equipment held as replacement spares for equipment in current use in DOE programs.

§ 109–27.5202 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-like items properly classified as stores inventory.

§ 109–27.5203 Management policy.

(a) Procedures shall require records of spare equipment and purpose for retention, cross-referenced to location in facility and engineering drawing number.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. Frequency of review should be biennial. 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 that unneeded spare equipment be identified and reported in excess.

Subpart 109–27.53—Management of Precious Metals

§ 109–27.5300 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of DOE-owned precious metals by DOE organizations and contractors.

§ 109–27.5301 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.

§ 109–27.5302 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.

§ 109–27.5303 Precious metals control officer.

Each DOE organization and contractor holding precious metals shall designate a responsible individual as 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 the requirements of this subpart and Chapter IV of the DOE Accounting Practices and Procedures Handbook.

(b) Maintenance 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) Performance of periodic unannounced inspections of custodian's precious metals inventory and records.

(g) Conduct of an annual review of precious metals holdings to determine excess quantities.

(h) Preparation and submission of the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conduct of a program for the recovery of silver from used hypo solution and scrap film in accordance with FPMR §§ 101–42.3 and 109–42.3.

(j) Preparation and submission of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–42.301–1.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals for stockrooms.

§ 109–27.5304 Practices and procedures.

§ 109–27.5304–1 Acquisitions.

DOE organizations and contractors shall contact the DOE Precious Metals Pool Manager to determine the availability of precious metals prior to acquisition on the open market.

§ 109–27.5304–2 Designation of custodians.

Responsible individuals shall be designated as precious metals custodians. Custodians shall be responsible for proper control and safeguarding of the precious metals when issued for use.

§ 109–27.5304–3 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 custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

§ 109–27.5304–4 Perpetual inventory records.

Perpetual inventory records shall be maintained as specified in Chapter V of the DOE Accounting Practices and Procedures Handbook.

§ 109–27.5304–5 Physical inventories.

(a) Physical inventories shall be conducted semiannually 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 class of metal. Metals in use in an experimental process, or which are contaminated and therefore cannot 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 materials shall be required from 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.

§ 109–27.5304–6 Stock issue.

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 effective and economical support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metal, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated semiannually. Issue of metals will be made only to authorized persons.

(c) Accurate records of all movements (receipts, issues, returns, and disposals) shall be developed by, and 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.

§ 109–27.5304–7 Control by using organization.

(a) After receipt, the using organization shall provide the necessary controls for the precious metal. Materials shall be stored in a locked repository at all times except for small 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 Department 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.

§ 109–27.5305 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 this quantity is in excess of programmatic 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.

§ 109–27.5306 Precious metals pool.

§ 109–27.5306–1 Purpose and operation.

The purpose of the precious metals pool is to recycle DOE-owned precious metals within the Department at the minimum cost to participants. The pool is operated by a private firm under a contract with the Oak Ridge Operations Office. Current information regarding the contractor's name, address, and telephone number and processing charges can be obtained by request through the Chief, Property Management Branch, Oak Ridge Operations Office.

§ 109–27.5306–2 Withdrawals.

Pure metal, parts, fabricated products, catalysts, or solutions, are generally available and the DOE pool contractor can provide assistance in supplying such requirements. Metals can be shipped to any facility to fulfill fabrication requirements.

§ 109–27.5306–3 Returns.

The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals should 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.

§ 109–27.5306–4 Withdrawals/returns forecasts.

The precious metals pool contractor will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

§ 109–27.5306–5 Assistance.

DOE organizations or contractors may obtain specific information relative to the operation of the precious metals pool by contacting the Oak Ridge Operations Office as indicated in § 109–27.5306–1.

§ 109–27.5307 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 § 109–42.302.

PART 109–28—STORAGE AND DISTRIBUTION

Sec.
109–28.000 Scope of part.
109–28.001–50 Policy.
109–28.001–51 Storage guidelines.

Subpart 109–28.3—Self Service Stores

109–28.308–3 Limitations on use.
109–28.308–6 Safeguards.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25578, June 21, 1984, unless otherwise noted.

§ 109–28.000 Scope of part.

This part implements and supplements FPMR Part 101–28, Storage and Distribution.

§ 109–28.001–50 Policy.

Storage and warehouse services shall be—

(a) Established for the receipt, storage, issue, safekeeping and protection of Government-owned property when advantageous to the Government;

(b) Provided in the most economical and efficient manner through the use of Government-owned facilities, and where necessary available commercial facilities, consistent with program requirements; and

(c) Operated in accordance with generally accepted industrial management practices and principles.

§ 109–28.001–51 Storage guidelines.

(a) Adequate storage facilities shall be provided to ensure the proper safeguarding of all Government property.

(1) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(2) 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.

(3) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property. Entrance to such areas should be restricted to authorized personnel only.

(b) The following general storage principles shall be observed in the planning for the storage of Government personal property:

(1) Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practicable, labor should be conserved by use of modern materials handling equipment and storage aids which permit stacking by unit loads rather than by individual container units.

(2) Fast-moving items should be stored in convenient locations from which they can be issued with minimum handling. Stocks of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

(3) Property should be stored according to the kind of protection required. All items must be protected from fire and theft. Certain items require protection from dampness, heat, freezing, or extreme temperature changes. Others must be stored away from light and odors, protected from vermin infestation, or, because of their hazardous characteristics, stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.

(4) Orderly arrangement is essential to efficient operation of storehouses. All items should be so arranged that nomenclature and quantity may be readily determined.

(5) Stock rotation is based on the general storage principle of ''first in, first out.'' Many items, such as perishables, food stuffs, medicines, paints, and chemicals, are subject to deterioration or infestation which require that the older stock be issued first.

Subpart 109–28.3—Self Service Stores

§109–28.308–3 Limitations on use.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for the use of GSA shopping plates in accordance with FPMR §101–28.308–3.

§109–28.308–6 Safeguards.

The Director of Administration and heads of field offices for their respective organizations shall establish internal controls for safeguarding of GSA shopping plates in accordance with FPMR §101–28.308–6.

PART 109–29—FEDERAL SPECIFICATIONS AND STANDARDS

Sec.
109–29.000 Scope of part.

Subpart 109–29.1—General

109–29.103 Availability of Federal standardization documents.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

§109–29.000 Scope of part.

This part implements and supplements FPMR Part 101–29, Federal Specifications and Standards.

[49 FR 25579, June 21, 1984]

Subpart 109–29.1—General

§109–29.103 Availability of Federal standardization documents.

The Index of Federal Specifications and Standards may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Copies of Federal Specifications and Standards may be obtained as provided in the Index.

[49 FR 25579, June 21, 1984]

PART 109–30—FEDERAL CATALOG SYSTEM

Sec.
109–30.000 Scope of part.
109–30.000–50 Applicability.

Subpart 109–30.5—Maintenance of the Federal Catalog System

109–30.503 Maintenance actions required.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25579, June 21, 1984, unless otherwise noted.

§ 109–30.000 Scope of part.

This part supplements FPMR Part 101–30, Federal Catalog System.

§ 109–30.000–50 Applicability.

The provisions in FPMR Part 101–30 and this part do not apply to contractors.

Subpart 109–30.5—Maintenance of the Federal Catalog System

§ 109–30.503 Maintenance actions required.

(a) [Reserved]

(b) Standard Form 1303 shall be sent directly to GSA for processing. Inquiries concerning policy should be directed to the Property and Equipment Management Division (MA–422).

SUBCHAPTER F—ADP AND TELECOMMUNICATIONS

PART 109–35—TELECOMMUNICATIONS

Sec.
109–35.000 Scope of part.
109–35.000–50 Applicability to contractors.

Subpart 109–35.1—General Provisions

109–35.107 Surveys.
109–35.108 Agency payments to common carriers.

Subpart 109–35.2—Major Changes and New Installations

109–35.202 Definition of major changes.

Subpart 109–35.3—Utilization and Ordering of Telecommunications Services

109–35.304 Changes in telephone listing.
109–35.306 Forms for telegraph messages.

Subpart 109–35.4—Contracting, Negotiation, and Representation Involving Telecommunications Services

109–35.402 Contracting.
109–35.405 Submission of requests.

AUTHORITY: Sec. 161, as amended, 68 Stat. 948, sec. 205, 63 Stat. 390, as amended; 42 U.S.C. 2201, 40 U.S.C. 486.

SOURCE: 47 FR 39823, Sept. 10, 1982, unless otherwise noted.

§109–35.000 Scope of part.

This part prescribes DOE regulations governing telecommunications activities, which regulations implement Federal Property Management Regulations.

§109–35.000–50 Applicability to contractors.

FPMR 101–37, Telecommunications Management, and DOE–PMR 109–35, Telecommunications, shall be applied to cost-type contractors' telecommunications activities as follows:

(a) In all respects to cost-type contractors employing telecommunications facilities and services which are wholly owned, leased, or cost reimbursed by the DOE.

(b) To all other cost-type contractors whose telecommunications costs are directly identifiable and chargeable to DOE, when such costs are considered significant and to the extent that application of DOE 5300.1, Telecommunications, is practicable.

Subpart 109–35.1—General Provisions

§109–35.107 Surveys.

Surveys of DOE communications facilities requested by GSA will be coordinated through DOE headquarters.

§109–35.108 Agency payments to common carriers.

GSA will advise DOE Headquarters of its requests for common carrier bills rendered to DOE.

Subpart 109–35.2—Major Changes and New Installations

§109–35.202 Definition of major changes.

For the purpose of this subpart 109–35.2, the following shall be deemed major changes or new installations of telecommunications facilities:

(a) *Local telephone service.* In connection with §101–37.202(a), installation or removal of tielines between the gateway PBX and satellite PBX's on the same site shall be deemed major changes or new installations requiring GSA review. Significant increases or decreases in the number of these lines or other information which could have an effect on the FTS traffic load will be reported to GSA.

(b) *Intercity telephone service.* Applies as written in §101–37.202(b).

(c) *Data transmission service.* Installation or removal of local data transmission channels or equipment which are used exclusively for onsite transmission (i.e., in the sense that there can be no direct transmission by the channel or equipment off the site) shall not require GSA approval. This, however, does not preclude compliance with the requirement of Subpart 101–37(c).

(d) *Telegraph service.* Installation or removal of exclusively onsite (i.e., in the sense that there can be no direct transmission by the equipment off the

site) teletype leased lines and associated equipment shall not be deemed major change or new installation.

(e) *Communications security service.* The GSA/DOE Agreement relating to communications security service provides information for GSA review in this area. No additional information need be provided by DOE with respect to facilities covered by that Agreement.

(f) *Radio service.* Notification to GSA may be made through the GSA member of the Interdepartment Radio Advisory Committee (IRAC). DOE need provide additional information with respect to matters reported to IRAC only if specifically requested by GSA. For purposes of radio service, calculation of the 20 regular working days referred to in FPMR 101–37.201–1 shall begin on the date the GSA member of IRAC is advised of the proposed DOE action. GSA will review applications filed for ''Telephone Action'' and will informally advise DOE of recommendations, if any, within 5 working days from the date of receipt of the application from IRAC.

(g) *Video and audio service.* The requirements of this paragraph shall not apply to exclusively onsite equipment (i.e., in the sense that there can be no direct transmission by the equipment or channels off the site).

Subpart 109–35.3—Utilization and Ordering of Telecommunications Services

§ 109–35.304 Changes in telephone listing.

DOE is required to use Standard Form 146 only in connection with joint use switchboards not operated by DOE or its contractors.

§ 109–35.306 Forms for telegraph messages.

DOE is required to use Standard Form 14 only in connection with DOE contractors' use of GSA-operated teletypewriter centers.

Subpart 109–35.4—Contracting, Negotiation, and Representation Involving Telecommunications Services

§ 109–35.402 Contracting.

Copies of existing DOE communications common carrier contracts shall be furnished to GSA for information and analysis.

§ 109–35.405 Submission of requests.

Field office requests for GSA assistance will be submitted through DOE Headquarters.

PART 109–36—ADP MANAGEMENT

Sec.

109–36.000 Scope of part.

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

109–36.300–50 Scope of subpart.
109–36.302–50 Reassignment of ADPE within DOE.
109–36.303–1 Designation of agency ADPE point of contact.
109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.
109–36.304 Availability list.
109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

Subpart 109–36.47—Reports

109–36.4700 Scope of subpart.
109–36.4702 Reporting excess or exchange/sale ADPE.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25579, June 21, 1984, unless otherwise noted.

§ 109–36.000 Scope of part.

This part implements and supplements FPMR Part 101–36 as it relates to utilization and disposal of excess automatic data processing equipment (ADPE).

Subpart 109–36.3—Reutilization of Automatic Data Processing Equipment and Supplies

§109–36.300–50 Scope of subpart.

This subpart implements and supplements FPMR Part 101–36.3. Policies and procedures relating to acquisition, reassignment, or retention of excess ADPE are contained in policies and procedures established by the Office of the Director of Administration.

§109–36.302–50 Reassignment of ADPE within DOE.

(a) Transfers within DOE of excess ADPE having a current market price equal to or greater than that specified for major items as defined in the DOE Program Budget Structure are made pursuant to the requirement for proposals submitted in accordance with instructions from the Office of the Director of Administration.

(b) Transfers within DOE of excess ADPE with a current market price of less than that specified for major items shall be approved by the head of the field office and the head of the Headquarters organization having ADPE responsibility for the equipment. However, when more than one request is received, the field office head shall notify the requestors that acquisition proposals prepared in accordance with instructions from the Office of the Director of Administration shall be forwarded to the field organization for review. After receipt of all proposals, the field office head shall—

(1) Approve the request for transfer which is judged to be in the best interest of DOE; or

(2) Where this judgment cannot be made locally, forward the proposals to the Director of Administration for action in a manner similar to proposals for equipment having a current market price equal to or greater than that specified for major items.

§109–36.303–1 Designation of agency ADPE point of contact.

The Director of Administration shall designate the DOE point of contact to carry out the responsibilities contained in FPMR §101–36.303–1.

§109–36.303–3–50 Reporting excess or exchange/sale ADPE within DOE.

(a) All ADPE, either Government-owned or-leased, which is no longer needed or is scheduled for replacement, shall be made available for utilization within DOE as soon as plans for the release of such equipment are known.

(b)(1) Government-owned ADPE shall be reported for utilization screening within DOE on Standard Form (SF) 120, Report of Excess Personal Property. The SF 120 shall contain the information required in FPMR 101–36.4702 and, for internal screening purposes, a release date (date of availability). If the release date is not firm, a tentative release date should be given, which would be subject to change until the actual release date is established.

(2) The SF 120 shall be submitted to the Property and Equipment Management Division (MA–422) for inclusion in the Reportable Excess Automated Property System (REAPS) in accordance with §109–43.311–1–50.

(3) ADPE shall not be reported to GSA as excess until this screening has been accomplished and it has been established that there are no DOE claimants. Concurrent screening within DOE and GSA is not authorized. A minimum of 45 days should be allowed for screening ADPE prior to reporting it to GSA. In those instances where the release date can be determined sufficiently in advance, additional screening time should be allowed to permit maximum time for processing of requests to acquire excess ADPE.

(c) The procedures prescribed in §109–36.303–3–50(b) shall be followed for leased ADPE. However, when time does not permit sequential DOE and GSA circularization, excess leased ADPE may be circularized concurrently in DOE and GSA to assure earned credits are not lost to the Government. The SF 120 should clearly indicate concurrent screening by DOE and GSA. Where time does not permit assurance that earned credits are not lost to the Government, announcement of availability of excess leased ADPE may be circularized within DOE by teletype (TWX). The TWX should be sent to all DOE field offices with a request to further distribute to applicable contractors, and copies should be sent to the Office

of ADP Management (MA–24) and to the Property and Equipment Management Division (MA–422) at Headquarters.

§ 109–36.304 Availability list.

The Director of Administration shall develop and maintain distribution patterns for availability lists of excess and exchange/sale ADPE as contemplated in FPMR § 101–36.304.

§ 109–36.306 Requests for transfer of excess ADPE or exchange/sale ADPE.

The Director of Administration, heads of field offices, the Administrator, Energy Information Administration and contracting officers are authorized to sign Standard Form (SF) 122, Transfer Order Excess Personal Property, after appropriate approvals, involving requests for transfer of excess or exchange/sale ADPE, as required by FPMR § 101–36.306(a).

Subpart 109–36.47—Reports

§ 109–36.4700 Scope of subpart.

This subpart implements and supplements FPMR Subpart 101–36.47 as it relates to reporting excess or exchange/sale ADPE to GSA.

§ 109–36.4702 Reporting excess or exchange/sale ADPE.

Excess Government-owned or-leased ADPE and exchange/sale ADPE shall be reported to GSA on Standard Form (SF) 120, Report of Excess Personal Property, in accordance with the requirements of FPMR § 101–36.4702. No provision is made in FPMR § 101–36.4702 for the use of a TWX as a substitute for the SF 120 in reporting excess ADPE to GSA. When a TWX is used to report excess leased ADPE to GSA, it shall be followed up with an SF 120 to GSA, providing appropriate cross-reference information.

SUBCHAPTER G—TRANSPORTATION AND MOTOR VEHICLES

PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.
109–38.000 Scope of part.
109–38.000–50 Policy.

Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

Subpart 109–38.1—Reporting Motor Vehicle Data

109–38.100–1–50 Reporting DOE motor vehicle data.
109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Subpart 109–38.2—Registration and Inspection

109–38.202–50 Registration in foreign countries.
109–38.202–51 Shipment to foreign countries.

Subpart 109–38.3—Official U.S. Government Tags

109–38.302 Records.
109–38.303 Procurement.
109–38.305–50 Security.
109–38.305–51 Lost or stolen license tags.

Subpart 109–38.4—Official Legend and Agency Identification

109–38.404 Procurement of decalcomanias.
109–38.404–50 Security of decals.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

109–38.602 Unlimited exemptions.
109–38.602–50 Additional Department of Energy exemptions.
109–38.605 Additional exemptions.
109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.
109–38.607 Report of exempted motor vehicles.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

109–38.701 Methods of transfer.
109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

Subpart 109–38.9—Motor Vehicle Replacement Standards

109–38.900–50 Policy.
109–38.907 Fleets.
109–38.908 Exception.
109–38.908–50 Prompt disposal of replaced passenger vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

109–38.1003–50 DOE guidelines.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

109–38.1200 General.
109–38.1201 Billing code.
109–38.1202 Administrative control of credit cards.
109–38.1202–50 Additional control of credit cards.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.
109–38.1304–50 Selection of type of motor vehicles.
109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.
109–38.1306 Acquisition of fuel-efficient passenger automobiles.
109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.
109–38.1307 Acquisition of fuel-efficient light trucks.
109–38.1350 Conservation of motor vehicle fuels.

Subpart 109–38.50—Utilization of Motor Vehicles

109–38.5000 General.
109–38.5001 Utilization controls and practices.
109–38.5002 Use objectives for motor vehicles.
109–38.5003 Application of use goals.

Subpart 109–38.51—Acquisition of Motor Vehicles

109–38.5100 General requirements.
109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.
109–38.5102 Passenger motor vehicle allocations.

109–38.5103 Acquisition.

Subpart 109–38.52—Aircraft

109–38.5200 Scope of subpart.
109–38.5201 Definitions.
109–38.5202 General.
109–38.5203 Aircraft safety.
109–38.5204 Pilot responsibility and authority.
109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.
109–38.5205–1 Statute.
109–38.5206 Aircraft authorization.
109–38.5207 Management responsibility.
109–38.5208 Registration and identification.
109–38.5209 Airworthiness.
109–38.5210 Maintenance.
109–38.5211 Operation.
109–38.5212 Records.
109–38.5213 Reports.

Subpart 109–38.53—Watercraft

109–38.5300 Scope of subpart.
109–38.5301 Definitions.
109–38.5302 General.
109–38.5303 Watercraft safety.
109–38.5304 Watercraft operations.
109–38.5305 Watercraft identification and numbers.
109–38.5306 Display of flags and seal.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

109–38.5400 Scope of subpart.
109–38.5401 Statutory requirement.
109–38.5402 Policy.
109–38.5403 Official purposes.
109–38.5404 Approval of authorizations.
109–38.5405 Duration of authorizations.
109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.
109–38.5407 Use of Government-owned or Government-furnished motor vehicle in travel status.
109–38.5408 Use of Government-owned or -leased bus systems.
109–38.5409 Use of Government motor vehicles in emergencies.
109–38.5410 Use of motor vehicles by the Postal Service.
109–38.5411 Instructions to motor vehicle operators.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25580, June 21, 1984, unless otherwise noted.

§ 109–38.000 Scope of part.

This part implements and supplements FPMR Part 101–38 concerning the management of motor equipment, vehicles, aircraft and watercraft.

§ 109–38.000–50 Policy.

Necessary motor equipment, vehicles, aircraft and watercraft shall be provided, maintained and utilized in support of DOE programs in the most practical and economical 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.

As used in this part the following definitions apply:

(a) *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, aircraft and watercraft.

(b) *Motor vehicle* means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on the highways in the transportation of property or passengers. This includes both motorcycles and motor scooters.

(c) A *replacement off-set* is an authorization to one DOE field organization to acquire a new passenger motor vehicle to replace an old passenger motor vehicle which has become excess to another DOE field organization. The transaction does not require the physical transfer of the excess vehicle, but is limited to a documentary transfer.

(d) *Special purpose vehicles* have limited but essential missions. They are not generally used to carry passengers, freight or other materials. Trucks with permanently mounted equipment, (such as fire trucks, special tank trucks, wreckers and trucks with compressors or generators in fixed mounting on the body), may be classified as special purpose trucks. Vehicles other than sedans and station wagons which are to be used only during a defined or specified contingency, such as evacuation or other similar emergency, may also be classified as special purpose vehicles. For reporting purposes within DOE, motorcycles and motor scooters will also be reported as special purpose vehicles.

(e) *Experimental vehicles* are those 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, and they are not subject to statutory price limitations or to authorization limitations.

Subpart 109–38.1—Reporting Motor Vehicle Data

§109–38.100–1–50 Reporting DOE motor vehicle data.

(a) Organizations operating DOE-owned and/or commercially term leased (60 continuous days or more) motor vehicles shall provide one copy of the following reports to the Property and Equipment Management Division (MA–422) by October 31 of each year.

(1) DOE Report of Motor Vehicle Data.

(2) DOE Report of Truck Data.

(b) Copies of the report forms may be obtained by contacting the Property and Equipment Division.

§109–38.102–2–50 Reporting DOE domestic and foreign vehicles.

Separate forms shall be prepared for vehicles located: (a) In the United States, including territories and possessions, and (b) in a foreign country.

Subpart 109–38.2—Registration and Inspection

§109–38.202–50 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.

§109–38.202–51 Shipment to foreign countries.

(a) When motor vehicles are being shipped for use in a foreign country, the desk officer or individual handling the affairs pertaining to the country in the Department of State shall be contacted before shipment is made for information concerning the licensing and shipping of the vehicle.

(b) The person responsible for, and expected to use, 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.

Subpart 109–38.3—Official U.S. Government Tags

§109–38.302 Records.

(a) The Property and Equipment Management Division (MA–422) 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 Departmental organization shall maintain a current record of individual assignments of license tags to the motor vehicles under its jurisdiction as required by FPMR §101–38.302.

§109–38.303 Procurement.

The procedures for acquiring official Government license tags by DOE organizations are covered in DEAR 908.7101–7.

§109–38.305–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

§109–38.305–51 Lost or stolen license tags.

Fleet managers, upon receipt of information on lost or stolen Government license tags, should promptly report the loss to the local DOE security office and local law enforcement authorities. Lost or stolen Interagency Motor Pool Vehicle license tags should be reported to the applicable General Services Administration motor pool manager. District of Columbia or state license tags which are lost or stolen should be reported to the District of Columbia, Department of Transportation, or the appropriate state agency.

Subpart 109–38.4—Official Legend and Agency Identification

§ 109–38.404 Procurement of decalcomanias.

The official legend and agency identification for DOE shall be of elastomeric pigmented film type decalcomania which are currently available in black (DOE Form 1530.1) and white (DOE Form 1530.2). These forms shall be requisitioned from the Logistics Management Division (MA–235) using DOE Form 4250.2, ''Requisition for Supplies, Equipment or Services'', a local supply request form or a memorandum.

§ 109–38.404–50 Security of decals.

Unissued decals shall be stored in a locker drawer, cabinet or storage area with restricted access to prevent possible fraud or misuse.

Subpart 109–38.6—Exemptions From Use of Official U.S. Government Tags and Other Identification

§ 109–38.602 Unlimited exemptions.

(a)–(d) [Reserved]

(e) Exemptions from the requirement for the display of Federal license tags and other official identification may be approved by heads of field offices and the Director of Administration for motor vehicles under their cognizance which are used in the conduct of security operations or in the enforcement of security regulations of DOE.

§ 109–38.602–50 Additional Department of Energy exemptions.

The requirements for the display of Federal license tags and other identification do not apply to motor vehicles used in foreign countries, Trust Territories, or the Pacific Test Areas (see FPMR §§ 101–38.202 and 109–38.202–50).

§ 109–38.605 Additional exemptions.

(a) Requests made pursuant to FPMR § 101–38.605 for exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles which are not within the criteria in FPMR § 101–38.602 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422). Each such request shall describe the vehicle for which exemption is sought, the nature of the work on which it is used, and include a certification to the effect that conspicuous identification would interfere with such use.

(b) The Property and Equipment Management Division (MA–422) shall be notified promptly when the need for a previously authorized exemption no longer exists.

(c) Copies of certifications and cancellation notices required to be furnished to GSA pursuant to FPMR § 101–38.605 will be transmitted to GSA by the Property and Equipment Management Division.

§ 109–38.606 Approval of tag requests for exempted vehicles in the District of Columbia.

The Director of Administration is designated as the DOE liaison representative to approve requests for regular District of Columbia license tags for Headquarters motor vehicles exempted from carrying U.S. Government license tags and other official identification, and furnishes annually to the District of Columbia Department of Motor Vehicles the name and specimen signature of each representative authorized to approve such requests.

§ 109–38.607 Report of exempted motor vehicles.

The Director of Administration and heads of field offices for their respective organizations shall maintain records of motor vehicles exempted from displaying Federal license tags and other identification which will permit the submission of reports by the Property and Equipment Management Division upon request of GSA in accordance with FPMR § 101–38.607. The records shall contain a listing by type of each exempted vehicle operated during the previous fiscal year, giving the information for each vehicle on hand at the beginning of the year and each of those newly authorized during the year, including—

(a) By whom exemption was authorized, by name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemptions and limitations on uses of the exempted vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemption for vehicles continuing in use.

Subpart 109–38.7—Transfer of Title to Government-Owned Motor Vehicles

§109–38.701 Methods of transfer.

(a)–(b) [Reserved]

(c) The certificates and copies of Certificate of Release of a Motor Vehicle (SF's 97 and 97A) shall be numbered consecutively by each DOE field and Headquarters organization disposing of motor vehicles.

§109–38.701–50 Delegation of authority to sign Standard Forms 97 and 97A.

(a) Heads of DOE field offices and the Director of Administration may delegate the authority to sign SF's 97 and 97A to responsible DOE personnel under their jurisdiction. The name of the officer delegated to sign will be typed on the certificate in addition to the signature in ink.

(b) All DOE field and Headquarters organizations shall establish proper controls to prevent blank copies of SF's 97 and 97A from being obtained by unauthorized persons.

Subpart 109–38.9—Motor Vehicle Replacement Standards

§109–38.900–50 Policy.

It is the policy of DOE to continue in service motor vehicles which meet prescribed replacement standards, but which are in usable and workable condition, provided that—

(a) A continued need exists for the vehicle;

(b) The vehicle can be operated safely and dependably without excessive repair and maintenance costs. Normally, when any single repair job exceeds 25 percent of the estimated current market value of a vehicle, consideration should be given to replacement in lieu of repair and retention;

(c) Repair parts are readily obtainable; and

(d) Retention will not substantially reduce the exchange/sale value of the vehicle.

§109–38.907 Fleets.

The replacement limitations cited in FPMR §101–38.907 are applicable to each of DOE's field organizations and may not be exceeded.

§109–38.908 Exception.

Motor vehicles may be replaced without regard to the replacement standards in FPMR §101–38.9 only after certification by the appropriate head of the field or Headquarters organization that a vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

§109–38.908–50 Prompt disposal of replaced passenger vehicles.

Because of the limitation on the total number of passenger vehicles which DOE may own, replaced passenger vehicles shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both vehicles. Because of disposal problems, there may be occasions where quick disposal of the old equipment may not be feasible or advantageous to the Government, e.g., it may be determined that there is an insufficient number for economical sale, or that sale would bring substantially better prices at a later date because of seasonal effects on sale prices. Under such circumstances, temporary retention of the replaced passenger vehicle may be justified. However, such retention may not be used as justification for concurrent operation of the new and replaced vehicles.

Subpart 109–38.10—Scheduled Maintenance of Motor Vehicles

§109–38.1003–50 DOE guidelines.

(a) Whenever practicable, existing Government service facilities shall be consolidated, or commercial services shall be utilized, to reduce to a minimum the maintenance facilities and

equipment, supplies, parts, stocks and overhead costs.

(b) Maintenance also shall be geared to a planned replacement program. Individual vehicle maintenance record files shall be kept and made readily available to appropriate maintenance personnel to provide historical 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 heads of field offices. To exceed repair limitations, approval from heads of field offices is required, particularly as the time of replacement approaches.

(d) Adequate maintenance schedules shall be provided to accomplish the following objectives in the most economical manner:

(1) To maintain equipment in safe and economical operating condition.

(2) To prevent equipment failures resulting in program delays and excessive downtime.

(3) To prevent premature wear and deterioration.

(4) To prevent undue depreciation.

(5) To conserve materials and manpower.

(e) Warranties. (1) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized. A system should be established to assure that defective materials and workmanship on vehicles under warranty are corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

(2) When motor vehicles are maintained in Government shops in isolated locations that are distant from franchised dealer shops, or when it is not practical to return the vehicles to a dealer, billback agreement shall be sought from manufacturers to permit warranty work to be performed in Government shops on a reimbursable basis.

Subpart 109–38.12—Preparation and Control of Standard Form 149, U.S. Government National Credit Card

§ 109–38.1200 General.

FPMR § 101–26.406 authorizes the use of Standard Form 149, U.S. Government National Credit Card for Federal agencies for obtaining service station deliveries and services. The use of the SF–149 by each field organization or by Headquarters is optional. When a field organization elects to use the form, it shall be used on a field organization basis.

§ 109–38.1201 Billing code.

DOE organizations shall request the assignment of billing address code numbers from the Property and Equipment Management Division (MA–422). Following the assignment, DOE organizations shall submit orders for issuance of national credit cards in accordance with FPMR § 101–26.406–5 and the current Federal Supply Schedule FSC Group 75, Part VII. The billing code consists of the following:

(a)(1) The first three digits of the 10–digit billing code embossed on national credit cards in use by DOE will always be 000.

(2) The fourth digit may be used by DOE organizations and contractors to designate the vehicle class or provide additional billing code numerals. If not used for either of these purposes, zero will be used.

(3) The fifth and sixth digits will be ''89'', the agency code assigned to DOE.

(4) The seventh, eighth, and ninth digits indicate the billing address code number.

(b) [Reserved]

§ 109–38.1202 Administrative control of credit cards.

(a) The head of each organization using credit cards shall be responsible for establishing procedures to provide for the administrative control of credit cards in accordance with the guidelines set forth in FPMR Part § 101–38.1202.

(b) [Reserved]

§ 109–38.1202–50 Additional control of credit cards.

(a) All vehicle operators should be provided with appropriate instructions regarding the use and protection of credit cards against theft and misuse.

(b) In the event an SF–149 is lost or stolen, reasonable precautions shall be taken to minimize the opportunity of purchases being made by unauthorized persons. In addition to the written notification required in FPMR § 101–38.1202(b)(1), the paying office shall be promptly notified of the loss or theft and to be on the alert for any unauthorized bills.

Subpart 109–38.13—Energy Conservation in Motor Vehicle Management

§ 109–38.1304 Mandatory provisions affecting the acquisition and use of all motor vehicles.

(a)–(b) [Reserved]

(c) The use of motor vehicles for official purposes within DOE is governed by the provisions of DOE subpart 109–38.54.

(d) All requirements for term rentals or leases of sedans, station wagons or light trucks under 8,500 pounds gross vehicle weight shall be submitted to the Property and Equipment Management Division (MA–422) in accordance with §§ 109–38.1306–50, 109–38.1307 and DEAR 908.1170.

§ 109–38.1304–50 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by buy, hire, lease, forfeiture or transfer from another agency, shall be limited to the minimum body and engine size, and to only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, considering both acquisition and operating costs for units to be bought, and rental rates for rented or leased units.

(c) Dual-purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

(d) Motor scooters and motorcycles in place of higher cost motor vehicles can be used advantageously 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.

(e) Electric vehicles may be used advantageously for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

§ 109–38.1305 Mandatory provisions affecting the acquisition, use, and replacement of passenger automobiles.

In accordance with FPMR § 101–38.1305, all requests to acquire passenger automobiles larger than class 1A, 1B or II shall be forwarded with justifications through normal administrative channels to the Property and Equipment Management Division (MA–422) for certification to GSA.

§ 109–38.1306 Acquisition of fuel-efficient passenger automobiles.

(a) Organizations conducting motor vehicle operations shall forward annually (on or before December 1) to the Property and Equipment Management Division (MA–422) a plan for acquisition of passenger motor vehicles for the next fiscal year. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Order 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the Property and Equipment Management Division (MA–422) as required. This organization shall also review each submission for conformance with established fuel efficiency standards and shall develop and forward to GSA the

Departmental consolidated annual motor vehicle acquisition forecast.

(b) [Reserved]

§ 109–38.1306–50 Certification of fuel-efficient passenger automobile acquisitions.

(a) Requisitions for the buying of passenger motor vehicles shall be forwarded to the Property and Equipment Management Division (MA–422) for review, certification and submission to GSA.

(b) Proposals/ requests for commercially leased passenger automobiles, for a period of 60 continuous days or more, shall be forwarded to the Property and Equipment Management Division (MA–422) for review and certification prior to entering into an agreement to lease to insure compliance with Executive Order 12375 as implemented by GSA.

§ 109–38.1307 Acquisition of fuel-efficient light trucks.

In accordance with FPMR § 101–38.1307 and Executive Order 12375, the requirements of §§ 109–38.1306 and 109–38.1306–50 also apply to the acquisition of any truck under 8,000 pounds gross vehicle weight and covered by Federal Standards 292 and 307.

§ 109–38.1350 Conservation of motor vehicle fuels.

In furtherance of energy conservation objectives, each organization within DOE shall establish programs which will ensure achievement of the reduced motor vehicle fuel consumption objectives. The following actions shall be adopted to achieve the conservation goals of reduced motor vehicle fuel consumption:

(a) Do not idle engine for long periods of time.

(b) Reduce motor vehicle travel to the maximum extent practicable without jeopardizing essential business.

(c) Use the smallest vehicle that is feasible for the job.

(d) Maintain tire pressure to tire manufacturer's recommendations. Check pressure at least once each week.

(e) Give wide publicity on proper driving techniques as prescribed by GSA to conserve fuels and require that all drivers diligently follow them.

(f) Limit speed to the National Speed Limit.

(g) Ensure proper maintenance and servicing procedures, such as tuneups, in accordance with the manufacturer's latest specifications.

Subpart 109–38.50—Utilization of Motor Vehicles

§ 109–38.5000 General.

It is DOE policy to keep the number of motor vehicles at the minimum needed to satisfy program requirements. To assure attainment of this goal, continuing attention shall be given to developing and implementing controls and practices which will help achieve the most practical and economical utilization of vehicles.

§ 109–38.5001 Utilization controls and practices.

Controls and practices to be used by DOE organizations and contractors for achieving maximum economical utilization of motor vehicles shall include, but not be limited to—

(a) The maximum use of equipment pooling arrangements, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components with periodic documented reviews of such assignments to determine if underutilization exists and whether reassignment is necessary;

(c) Frequent review of vehicle utilization statistics by appropriate levels of management, with prompt reassignment and/or disposal action performed as required;

(d) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(e) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy; and

(f) The maintenance of individual equipment use records, such as trip

tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

§ 109–38.5002 Use objectives for motor vehicles.

The following use goals are established for DOE as average objectives:

(a) Sedans and station wagons—3,000 miles per quarter or 12,000 miles per year.

(b) Light trucks and general purpose vehicles, one ton and under (less than 12,500 GVW)—10,000 miles per year.

(c) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 16,999 GVW)—7,500 miles per year.

(d) Heavy trucks and general purpose vehicles, three ton and over (17,000 GVW and over)—7,500 miles per year.

(e) Truck tractors—10,000 miles per year.

(f) All-wheel-drive vehicles—7,500 miles per year.

(g) Other motor vehicles—No average use goals for other trucks, ambulances, buses, and special purpose vehicles are established. The use of such equipment shall be reviewed and necessary action taken to ensure that the equipment is fully utilized or declared excess to the Department's needs.

§ 109–38.5003 Application of use goals.

Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements must be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements and special operating conditions, and should be consistent with the justifications used to obtain vehicle authorizations. Both Department-wide and local use objectives should be applied in such a manner that their application does not stimulate vehicle use for the purpose of meeting the objective. The ultimate standard against which vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

Subpart 109–38.51—Acquisition of Motor Vehicles

§ 109–38.5100 General requirements.

The acquisition of motor vehicles shall be limited to the minimum number needed to adequately serve program requirements and satisfy the intent of Congress. Any additions to the fleet must be fully justified and the justification shall include substantiation that the intent of 109–38.000–50 and 109–38.50 are satisfied.

§ 109–38.5101 Authority required for acquisition or hire of passenger motor vehicles.

(a) In accordance with 31 U.S.C. 1343, authority for the buying, leasing, or hire of passenger motor vehicles is contained in the annual appropriation act for DOE.

(b) The acquisition of passenger motor vehicles by transfer from another Government agency shall be considered as an addition to the DOE passenger motor fleet.

(c) Passenger motor vehicles may not be bought or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriation concerned or other law;

(2) Acquired from excess for upgrading or replacement purposes and an equal number of replaced vehicles are reported for disposal as excess within 30 days; or

(3) For temporary emergency needs not in excess of three months in lieu of commercial rentals.

(4) For temporary emergency needs over three months and approved by the Director of Procurement and Assistance Management.

§ 109–38.5102 Passenger motor vehicle allocations.

(a) To assure that DOE acquisitions do not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall allocate to and inform the field organizations of the number of passenger motor vehicles which may be acquired each fiscal year. These allocations and the statutory cost limitations shall not be exceeded.

(b) In order that unused allocations to acquire passenger motor vehicles may be reassigned within the Department, the organizations concerned shall notify the Property and Equipment Management Division (MA–422) when allocations will not be used. Such notification shall be submitted as soon as possible but not later than June 15 of each year.

(c) Passenger motor vehicles acquired from excess to meet temporary emergency needs for longer than three months shall be charged against the number authorized for purchase unless otherwise approved by the Director of Procurement and Assistance Management (See Comp. Gen. Decision. B–154282 dated October 15, 1966).

(d) In order that passenger vehicles no longer needed by one field organization may be used by another, either by actual transfer for continued use or as replacement off-sets, they shall be reported to the Property and Equipment Management Division (MA–422) prior to any disposal action so that such use can be properly coordinated within DOE.

§ 109–38.5103 Acquisition.

(a) Policies and procedures for the procurement of new motor vehicles, including provisions for the acquisition of additional systems and equipment for sedans and station wagons, are set forth in FPMR 101–25.304 and 101–26.5 and DEAR 908.7101.

(b) Policies and procedures for the leasing of motor vehicles are set forth in FPMR § 101–39.601 and DEAR 908.11. The Director of Administration and heads of field offices for their respective organizations are responsible for certifying that leased passenger vehicles larger than type II (compact) are essential to the mission of the organization concerned.

Subpart 109–38.52—Aircraft

§ 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of aircraft and aircraft services, excluding aircraft owned and operated by other Federal activities for DOE.

§ 109–38.5201 Definitions.

As used in this subpart the following definitions apply:

(a) *Aircraft* means a device that is used or intended to be used for flight in the air, including: heavier than air, and lighter than air and ultra-light aircraft, gliders, helicopters, rigid and nonrigid airships, and balloons.

(b) *Chartered aircraft* are aircraft rented or hired on an intermittent basis, with or without the services of a pilot or other operating aircrew members.

(c) *Leased aircraft* are aircraft obtained on a contractual basis, for a stipulated time interval, as distinguished from intermittent charter or short-term rental.

(d) *Military aircraft* are aircraft on loan from the Department of Defense (DOD).

(e) *Pilot* is an individual possessing the required FAA credentials and meeting the qualification requirements and other criteria as required by the employing organization.

(f) *Part-time pilot* is one who is employed specifically to operate aircraft on a ''when-needed'' basis.

§ 109–38.5202 General.

Department-wide policies, standards, guidelines and procedures for management of aircraft and aviation services, necessary staff assistance, and general liaison with other Federal agencies are provided by the Director of Procurement and Assistance Management. Heads of field offices must ensure that

management, review, approval and accounting procedures and systems are implemented to comply with the requirements of OMB Circular A–126, ''Improving the Management and Use of Government Aircraft.''

§ 109–38.5203 Aircraft safety.

(a) Policy development and general overview of aircraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

(b) Aviation operations and aircraft safety standards, criteria and procedures for DOE aviation operations are established by the Assistant Secretary for Policy, Safety and Environment. Heads of field offices may establish higher safety standards, criteria and procedures when they have determined that it is necessary to assure the safety of specific operations under their jurisdiction.

§ 109–38.5204 Pilot responsibility and authority.

(a) It shall be the responsibility of the pilot to be aware of, and conform to, Federal Aviation Regulations and other requirements of the Federal Aviation Administration (FFA), Department policies and field organization directives, and the regulations and directives of other applicable authority, including those relating to use for official purposes only.

(b) The pilot is responsible for ensuring that all necessary maintenance, repairs and FAA inspections are accomplished and for determining that the aircraft is airworthy.

(c) The pilot is at all times responsible for the safe operation of his aircraft and for the safety of his crew and passengers. Insofar as the loading of the aircraft, weather, mechanical, and other safety conditions are concerned, the pilot shall have final authority for determining whether a particular flight shall be continued or terminated and how it shall be made.

§ 109–38.5205 Authority required for the acquisition, hire, or borrowing of aircraft.

§ 109–38.5205–1 Statute.

(a) In accordance with 31 USC 1343(d), authority for the buying, leasing, or hire of aircraft is contained in the annual appropriation act for DOE.

(b) The acquisition of aircraft by transfer from another Government agency shall be considered as an addition to the DOE aircraft fleet.

(c) Aircraft may not be bought, leased, or acquired by transfer or loan unless they are—

(1) Specifically authorized by the Director of Procurement and Assistance Management, pursuant to the appropriations concerned or other laws (except for temporary rentals or loans of 30 days or less);

(2) Temporary rental or loans (30 days or less) approved by the head of the field office; or

(3) Acquired from Government excess for upgrading or replacement purposes, provided: (i) That such acquisition is without reimbursement, (ii) that the aircraft can be certified as airworthy without extensive or costly modification, and (iii) that an equal number of aircraft is reported for disposal as excess within 30 days after delivery of the replacement aircraft.

§ 109–38.5206 Aircraft authorization.

(a) To assure that acquisitions do not exceed the number of aircraft authorized to be acquired in any fiscal year, the Director of Procurement and Assistance Management shall inform DOE field organizations each fiscal year of the number of aircraft which may be acquired. These authorizations shall not be exceeded.

(b) The acquisition of specific aircraft by type shall be coordinated with the Office of Operational Safety (PE–242) to assure that the selected aircraft type can perform the mission requirements safely and meet all applicable safety standards.

§ 109–38.5207 Management responsibility.

The head of each field organization having an aircraft operation shall establish procedures to ensure—

(a) That the acquisition of aircraft, including military aircraft, is centrally controlled to ensure that authorizations are not exceeded;

(b) Because of the statutory limitations on the number of aircraft which DOE may acquire, replaced aircraft must be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement equipment to avoid concurrent operation of both aircraft.

(c) That each aircraft is equipped with the appropriate avionics and accessories required by its FAA type certification or military department's operators manual for the type of flight intended. Life jackets shall be provided and readily available for all occupants of aircraft on extended overwater flights as defined in Federal Aviation Regulation 1.1. Aircraft on flights into isolated areas shall be equipped with emergency rations and appropriate survival gear;

(d) Conformance with FAA requirements for the registration, certification, maintenance, and operation of aircraft, engines, and component equipment;

(e) Selection of qualified pilots and crew members and the maintenance of pilot and crew competence commensurate with job requirements;

(f) Establishment of dispatching and tracking procedures or other controls that will assure knowledge of aircraft location when operating in areas where flight plan service is not available;

(g) Overall safe, efficient, and economical operation, maintenance, utilization, and replacement of aircraft;

(h) That pooling is used as necessary to obtain maximum utilization;

(i) That contract or charter pilots are duly certified to meet all requirements and regulations established by the FAA for the particular aircraft;

(j) That chartered, leased, or rented aircraft are operated and maintained in compliance with all rules, regulations, and minimum standards of the FAA;

(k) Than any charter, rental or hire of aircraft and operators shall meet the requirements of 14 CFR 135; and

(l) That DOE-owned, -leased, and borrowed aircraft are used for official purposes only and that all flight and operational personnel, including the pilots, are aware of the provisions of § 109–38.54.

§ 109–38.5208 Registration and identification.

(a) Department-owned aircraft shall be registered with the FAA. The certificate of registration shall be displayed in the aircraft in accordance with FAA requirements. A similar requirement shall be included in any arrangement for the charter, rent, hire, loan or lease of aircraft.

(b) All aircraft shall display markings as required by the Federal Aviation Regulations for registered aircraft of the United States.

§ 109–38.5209 Airworthiness.

With the exception of public use aircraft being operated under special regulations of the FAA, all aircraft shall be required to have a currently effective FAA Airworthiness Certificate appropriate to the proposed usage. This certificate shall be displayed in the aircraft. Exceptions to this requirement are: (a) Uncertified aircraft may be ferried with minimum crew when there is a written determination by the head of the field office or his designee that the aircraft is safe for flight, and (b) aircraft obtained by transfer from the Department of Defense or the U.S. Coast Guard may be ferried incident to such transfer when the aircraft has been released as airworthy for flight.

§ 109–38.5210 Maintenance.

As a minimum, all aircraft, aircraft engines, propellers, accessories, and equipment shall be maintained and serviced in accordance with FAA requirements for air carrier and non-air carrier aircraft, as appropriate, and the instructions of the manufacturer. All repairs and alterations shall be performed and approved in accordance with applicable FAA or military standards and requirements. Preventive maintenance inspections shall be made of the airframe, engine, and accessory

equipment in conformance with the equipment manufacturer's recommendations and FAA or military requirements, as applicable.

§ 109–38.5211 Operation.

(a) Flight operations must comply with the Federal Aviation Regulations, and responsibility for such compliance rests with the pilot of the aircraft (§ 109–38.5204). Any special problem requiring deviation from the regulations shall be submitted through normal administrative channels to the Assistant Secretary for Policy, Safety and Environment for review and possible referral to the FAA for an appropriate waiver. Such a waiver is required for all fixed-wing aircraft engaged in low-level flying, and any change of conditions shall be reported to the responsible FAA District Office.

(b) Flight plans are required for all flights over isolated areas, and are also required for flights under visual flight rules (VFR) conditions except where the flight is of a local nature. Where normal flight plan channels are not available, the procedures as stated in § 109–38.5207(f) or other controls shall be followed that will assure current knowledge by responsible DOE or DOE contractor personnel of the aircraft's operating plan and of its arrival at destination.

(c) Aircraft, engines, and equipment shall be operated within the operating limits prescribed by the manufacturer.

(d) Adequate preflight and in-flight check lists shall be provided to, and used by, all pilots. A visual preflight inspection shall be made by the pilot before each takeoff, and any deficiency which might affect the safety of the flight shall be corrected before takeoff.

(e) All flights shall be planned and conducted so that the aircraft will arrive over its destination with a fuel reserve sufficient to reach a planned alternate destination. Flights conducted under FAA Instrument Flight Rules shall be required to conform to FAA fuel-time minimum requirements, or better.

§ 109–38.5212 Records.

As a minimum, flight, aircraft, and engine logs shall be maintained in accordance with FAA requirements, and records of operations, maintenance, and costs shall be maintained as required for management budgetary and reporting purposes. Heads of field offices shall establish requirements for other records needed.

§ 109–38.5213 Reports.

(a) Organizations operating aircraft shall complete a DOE Form 4450.1, Aircraft Cost and Operations Report, for each DOE-owned, -leased (over 30 days) or borrowed aircraft operated during the fiscal year. The completed forms shall be submitted to the Property and Equipment Management Division (MA–422) by December 31 of each year, or upon receipt or disposal of individual aircraft.

(b) Reports shall be submitted as required by the Federal Aviation Administration, the National Transportation Safety Board, the General Services Administration, and the Assistant Secretary for Policy, Safety and Environment. Heads of field offices shall establish the requirements for other reports that may be needed for management or other purposes.

(c) All accidents involving aircraft shall be reported promptly to the National Transportation Safety Board, the Federal Aviation Administration as required, the head of the field organization concerned and the Assistant Secretary for Policy, Safety and Environment.

Subpart 109–38.53—Watercraft

§ 109–38.5300 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of all watercraft operated by DOE organizations and contractors. The policies and procedures set forth herein are minimal, and the head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the effective and efficient management of watercraft.

§ 109–38.5301 Definitions.

As used in this subpart the following definitions apply:

(a) *Watercraft* means any vessel used to transport persons or material on water.

(b) *Qualified Operator* means any person who has exhibited skill in handling watercraft, knowledge of ''Rules of the Road,'' and other basic watercraft knowledge necessary for safe and efficient operation.

(c) *Rules of the Road* means laws which govern the operation of watercraft on: (1) Great Lakes, (2) western rivers, (3) Inland, and (4) International Waters.

§ 109–38.5302 General.

Departmental-wide policies, standards, guidelines and procedures for management of watercraft are established by the Director of Procurement and Assistance Management.

§ 109–38.5303 Watercraft safety.

Policy development and general overview of watercraft safety in Departmental operations is exercised by the Assistant Secretary for Policy, Safety and Environment.

§ 109–38.5304 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation, knowledge of rules of the road, and basic watercraft knowledge have been exhibited to the head of the field office. The U.S. Coast Guard Auxiliary (USCG), American Red Cross and U.S. Power Squadrons teach public courses in some locations which are applicable to small boat operations (noncommercial watercraft up to 65′ overall length).

(b) Before a watercraft is put underway, the operator shall check the vessel to ensure that the necessary equipment, including personal flotation devices and lights, as required by laws applicable to the area of operation, are present, properly stowed and in proper working order. Optional equipment recommended by USCG or other competent authority shall also be included when determined to be necessary by the responsible field office.

(c) Operators shall comply with all applicable Federal, state and local laws pertaining to the operation of watercraft. Where no state boating law exists, the requirements of the Federal Boating Act of 1958, as amended, shall apply.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

§ 109–38.5305 Watercraft identification and numbers.

(a) Watercraft in the custody of DOE or DOE contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, state or local field office. The numbers will be in addition to Departmental property control or other identification. Numbers shall be in block form affixed to the bow section, on both sides. Numbers and/or letters shall read from left to right in contrasting color to background not less than three (3) inches in height. When a watercraft is not registered by either the U.S. Coast Guard or state, the field organization shall assign an alpha-numeric designation, which will reflect Departmental and field office issue. Example—DOE–4560–SR. (NOTE: Some states specify the arrangement of numbers and letters which shall be used by Federal small boats home posted in the state's waters. Compliance with such a requirement is appropriate.)

(b) DOE is not required to have DOE-owned watercraft inspected and registered by the U.S. Coast Guard, but these services may be provided upon request.

§ 109–38.5306 Display of flags and seal.

Watercraft with overall length of twenty (20) feet or more, except barges, shall display the U.S. Ensign (National Flag). The display of the Departmental flag is optional. Location and times of display of flags shall be in accordance with accepted practice. A facsimile of the Departmental seal may also be displayed. When the seal is used it shall be placed on the superstructure in a prominent place and a size appropriate to the superstructure; except that if there is no superstructure, the seal shall be placed above the water line in the midship section of watercraft.

Subpart 109–38.54—Official Use of Motor Vehicles and Aircraft

§ 109–38.5400 Scope of subpart.

This subpart supplements FPMR Part 101–38, implements the provisions of statutes concerning the use of Government-owned, -rented or -leased motor vehicles and aircraft for official purposes and prescribes policies and procedures governing the use of such vehicles and aircraft acquired for official purposes.

§ 109–38.5401 Statutory requirement.

(a) 31 U.S.C. 1344(a) provides that, unless otherwise specifically provided, no appropriation available for any department shall be expended for the maintenance, operation, and repair of any Government-owned passenger motor vehicle or aircraft not used exclusively for official purposes. Official purposes shall not normally include the transportation of officers and employees between their domiciles and places of employment, except in cases of medical officers on outpatient medical service, and where officers and employees are performing field work which makes such transportation necessary and which has been approved by the head of the department concerned.

(b) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of any Government-owned motor vehicle or aircraft or any motor vehicle or aircraft leased by the Government, 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.

(c) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (which includes Government motor vehicles) is subject to criminal prosecution and, upon conviction, to fines up to $10,000 and/or imprisonment for up to 10 years.

(d) In addition to the potential administrative sanctions and criminal prosecution cited above, 31 U.S.C. 1344 is interpreted to preclude reimbursement to Government contractors for the maintenance, operation or repair of Government-owned, -rented, or -leased passenger motor vehicles or aircraft which are used by contractor personnel for other than official purposes.

§ 109–38.5402 Policy.

All Government-owned, -rented or -leased motor vehicles and aircraft operated by DOE and its contractors shall be utilized for official purposes only, and officers, employees and contractors of the Department shall not use or authorize others to use any Government-owned, -rented or -leased motor vehicle or aircraft for other than official purposes. It should be understood that use of Government-owned, -rented or -leased motor vehicles between an employee's domicile and place of employment when adequately justified may be authorized only as an exceptional action but not as a routine occurrence.

§ 109–38.5403 Official purposes.

(a) The term ''official purposes'' means those purposes required to carry out authorized programs, including program work carried out under contracts made pursuant to authority vested in the Department. ''Official purpose'' largely is a matter of administrative discretion and determination based on the particular facts of the case and the Government interest in the proposed use of the Government motor vehicle. It is the responsibility of the person authorizing or approving the use to examine the circumstances surrounding such use and assure that the facts sufficiently justify a conclusion of ''official purpose.''

(b) The term ''field work'' as used in 31 U.S.C. 1344a quoted above refers to the nature of the work performance; it is not restricted to ''field service'' as distinguished from ''Headquarters service.''

§ 109–38.5404 Approval of authorizations.

(a) The Director of Administration and heads of field offices for their respective organizations may approve the use of a Government-owned, -rented, or -leased motor vehicle between a DOE

employee's domicile and place of employment. This authority may be redelegated but not below the chief administrative officer level.

(b) Heads of field offices and contracting officers shall require:

(1) Contracting officer approval for all contractor authorizations over 10 days;

(2) That contractors prescribe and issue, subject to approval by the head of the field organization or contracting officer, such local written guidelines regarding the official use of motor vehicles or aircraft and the penalties for unauthorized use as may be necessary and appropriate for particular operating situations; and

(3) That the use of Government-owned, -rented, or -leased motor vehicles or aircraft by contractor employees for transportation between places of employment and domiciles, including storage at or near such domiciles, is justified in accordance with § 109–38.5403, and that such justifications, administrative determinations, and authorizations for such use and storage by contractor employees are documented and approved at appropriate supervisory levels within the contractor's organization and by the contracting officer when required by § 109–38.5404(b)(1).

(c) The approving official shall determine whether the official duties of the employees justify a conclusion of official purpose in accordance with § 109–38.5403. All approvals and supporting documentation shall be in writing and retained for three calendar years.

§ 109–38.5405 Duration of authorizations.

An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to the period of actual need or 60 days, whichever is less. Requests for renewals of such authorizations shall be subject to the same justification and document retention procedures as original requests, and must also indicate what attempts were made during the original period to eliminate the necessity for such use.

§ 109–38.5406 Use of a motor vehicle to drive to residence at start of official travel.

The use of a Government motor vehicle by an officer or employee to drive to his/her residence when it is in the interest of the Government that the employee start on official travel in the vehicle from that point, rather than from his/her place of business, is not regarded as prohibited by 31 USC 1344(a), (25. Comp. Gen. 844) or by Departmental policy.

§ 109–38.5407 Use of Government-owned or Government-furnished motor vehicles in travel status.

The use of Government-owned or Government-furnished motor vehicles by Government employees while in travel is governed by the Federal Travel Regulations (FTR 1–2.6a) and Chapter III–3 of DOE Order 1500.2 (DOE Travel Policy and Procedures Manual).

§ 109–38.5408 Use of Government-owned or -leased bus systems.

The provisions of this subpart do not affect passenger use of Government-owned or -leased bus systems (regardless of type of vehicle used in such system) established under the provisions of section 161e of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2201e).

§ 109–38.5409 Use of Government motor vehicles in emergencies.

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 (see § 109–1.5102). Such use shall be documented.

§ 109–38.5410 Use of motor vehicles by the Postal Service.

(a) Section 411 of the Postal Reorganization Act provides that executive agencies are authorized to furnish property and services to the Postal Service under such terms and conditions, including reimbursability, as the Postal Service and the agency concerned deem appropriate. Executive Order 11672 establishes a requirement for reimbursement at fair market value of such property or at a rate based on appropriate commercial

charges for comparable property , as agreed to by the agency head and the Postmaster General, unless the Director of the Office of Management and Budget finds that a different basis of valuation is more equitable or better serves the public interest.

(b) Pursuant to the authority in 39 U.S.C. 411, motor vehicles may be made available to the Postal Service for temporary use. The rental rate to be charged shall be the same as is charged by the General Services Administration for similar motor vehicles available from the interagency motor pool serving the geographical area involved, with appropriate allowances for any fuel and oil furnished by the Postal Service.

§109–38.5411 Instructions to motor vehicle operators.

Procedures shall be established to inform motor vehicle operators concerning—

(a) The statutory requirement that motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(c) Protection for DOE employees under the Federal Tort Claims Act (28 U.S.C. 2671) when acting within the scope of their employment;

(d) The penalties for unauthorized use of motor vehicles;

(e) The prohibition against picking up strangers or hitchhikers, and the transportation of non-official passengers:

(f) The proper care, control and use of credit cards; and

(g) Any other duties and responsibilities assigned to motor vehicle operators with regard to use, care, operation, and maintenance of motor vehicles.

PART 109–39—INTERAGENCY MOTOR VEHICLE POOLS

Sec.
109–39.000 Scope of part.

Subpart 109–39.3—Motor Vehicle Exemptions

109–39.302 Unlimited exemptions.
109–39.303 Limited exemptions.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

109–39.404–3 Problems involving service or cost.
109–39.404–4 Agency requests to withdraw participation.

Subpart 109–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

109–39.602–1 Government vehicles.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25589, June 21, 1984, unless otherwise noted.

§109–39.000 Scope of part.

This part implements and supplements FPMR Part 101–39 concerning the establishment and operation of interagency motor vehicle pools and systems.

Subpart 109–39.3—Motor Vehicle Exemptions

§109–39.302 Unlimited exemptions.

In those instances where it is determined that an unlimited exemption from inclusion of a vehicle in a motor pool system is warranted under the criteria set forth in FPMR §101–39.302, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.303 Limited exemptions.

The procedure established in § 101–39.302 shall be followed in seeking limited exemptions under the criteria set forth in FPMR § 101–39.303.

Subpart 109–39.4—Establishment, Modification, and Discontinuance of Motor Pools

§ 109–39.404–3 Problems involving service or cost.

To resolve problems involving motor pool service or cost, the affected field or Headquarters organization shall bring the matter to the attention of the chief of the motor pool providing the vehicles. In the event a satisfactory solution does not result, full particulars shall be forwarded to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

§ 109–39.404–4 Agency requests to withdraw participation.

Should circumstances arise at a given interagency motor pool location which tend to justify discontinuance or curtailment of participation by a DOE organization, as contemplated in FPMR § 101–39.404–4, the participating organization should forward complete details to the Property and Equipment Management Division (MA–422) for consideration and possible referral to the Administrator of General Services.

Subpart 101–39.6—Official Use of Government Motor Vehicles and Related Motor Pool Services

§ 109–39.602–1 Government vehicles.

(a) Subpart 109–38.54, Official Use of Motor Vehicles and Aircraft, prescribes DOE policies and procedures governing the official use of Government motor vehicles.

PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

Sec.

109–40.000 Scope of part.
109–40.000–50 Applicability to contractors.

Subpart 109–40.1—General Provisions

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.
109–40.110–2 Minority business enterprises.
109–40.112 Transportation factors in the location of Government facilities.
109–40.113 Insurance against transportation hazards.

Subpart 109–40.3—Traffic Management

109–40.301 Traffic management functions administration.
109–40.302 Standard routing principle.
109–40.303–3 Most fuel efficient carrier/mode.
109–40.304 Rate tenders to the Government.
109–40.305–50 Negotiations involving national security.
109–40.306–1 Recommended rate tender format.
109–40.306–2 Required shipping documents and annotations.
109–40.306–3 Distribution.

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: 45 FR 80287, Dec. 4, 1980, unless otherwise noted.

§ 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 1540.1 and except to the extent such departure is prohibited by statute or executive order.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

Subpart 109–40.1—General Provisions

§ 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 service. 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.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

§ 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 Competitive 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 service by these carriers is available.

§ 109–40.104 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 accomplishment of 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 a DOE-wide basis and are applicable, generally to DOE shipments. The DOE–HQ Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

§ 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 practicable 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 the 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.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

§ 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 carriers to provide the most direct service to the destination points.

§109–40.304 Rate tenders to the Government.

Under the provisions of section 10721 (formerly section 22) 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, rate 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 with 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 the 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 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 the 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 DOE–HQ Manager, Transportation Operations and Traffic.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

§ 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 the DOE shall include the following statement or one substantially the same 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 foregoing language 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 account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to the 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.

(a) 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).

(b) [Reserved]

§ 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, radioactives, 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 Regulations, 49 CFR, parts 100–189.

Subpart 109–40.51—Price-Anderson Coverge 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 DOE–HQ Manager, Transportation Operations and Traffic.

[45 FR 80287, Dec. 4, 1980, as amended at 47 FR 46850, Oct. 21, 1982]

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 109–42—PROPERTY REHABILITATION SERVICES AND FACILITIES

Sec.
109–42.000 Scope of part.
109–42.000–50 Applicability.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

109–42.301 General.
109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.
109–42.302 Recovery of silver from used hypo solution and scrap film.
109–42.350 Excess precious metals.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25590, June 21, 1984, unless otherwise noted.

§ 109–42.000 Scope of part.

This part implements and supplements FPMR Part 101–42, Property Rehabilitation Services and Facilities.

§ 109–42.000–50 Applicability.

The provisions of FPMR 101–42 and this part apply to contractors which generate used hypo solution, scrap film, other precious metals scrap and other recoverable scrap materials.

Subpart 109–42.3—Recovery of Precious Metals and Strategic and Critical Materials

§ 109–42.301 General.

The Director of Administration and heads of field offices for their respective organizations are responsible for establishing a program for the recovery of precious metals and strategic and critical materials in accordance with FPMR 101–42.3 and this subpart.

§ 109–42.301–1 Guidelines for conducting agency surveys and reporting to GSA.

Each DOE organization and contractor generating silver or other precious metals shall prepare the report on precious metals recovery in accordance with FPMR § 101–42.301–1, except that the reports shall be prepared on an annual basis for the fiscal year. Negative reports are required. Contractors shall submit reports to the DOE contracting office for review and approval. DOE organizations shall submit reports, including contractor reports, to the Property and Equipment Management Division (MA–422) not later than 30 days after the end of the fiscal year.

§ 109–42.302 Recovery of silver from used hypo solution and scrap film.

The Director of Administration and heads of field offices for their respective organizations are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film in accordance with FPMR § 101–42.302.

§ 109–42.350 Excess precious metals.

See § 109–43.313–54 for procedures for reporting excess precious metals to the DOE precious metals pool for recovery and subsequent redistribution within DOE.

PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.
109–43.000 Scope of part.
109–43.000–50 Applicability.
109–43.001–14 Personal property.

Subpart 109–43.1—General Provisions

109–43.101 Surveys.
109–43.102 Reassignment of property within executive agencies.
109–43.103 Agency utilization officials.

Subpart 109–43.3—Utilization of Excess

109–43.301–50 Policy.
109–43.302–50 Utilization and disposal by contractors.
109–43.303–1 Acquisition of mercury.
109–43.306 Property not required to be reported.
109–43.311–1–50 DOE utilization screening.
109–43.311–1–51 Procedures for effecting transfers within DOE.
109–43.311–5 Property at installations due to be discontinued.
109–43.312 Exceptions to reporting.
109–43.313–2 Printing, binding, and blankbook equipment and supplies.
109–43.313–50 Radioactively and chemically contaminated property.

109–43.313–51 Automatic data processing equipment.
109–43.313–52 Classified property.
109–43.313–53 Naval gun mounts.
109–43.313–54 Precious metals.
109–43.313–55 Shielding material.
109–43.313–56 Property in which the Government has an interest.
109–43.313–57 Lead.
109–43.315–5 Procedure for effecting transfers.
109–43.317–1 Cost of care and handling.
109–43.317–2 Proceeds.
109–43.319 Use of excess property on cost-reimbursement type contracts.
109–43.321 Certification of non-Federal agency screeners.

Subpart 109–43.5—Utilization of Foreign Excess Personal Property

109–43.503 Holding agency responsibilities.
109–43.504–50 Disposition of property not selected for return to the United States.

Subpart 109–43.47—Reports

109–43.4701 Performance reports.

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

109–43.5100 Scope of subpart.
109–43.5101 Definition.
109–43.5102 Policy.
109–43.5103 Reviews to determine need for retaining items.
109–43.5104 Utilization of property in facilities in standby status.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25590, June 21, 1984, unless otherwise noted.

§109–43.000 Scope of part.

This part implements and supplements FPMR Part 101–43, Utilization of Personal Property.

§109–43.000–50 Applicability.

The provisions of FPMR Part 101–43 and this part are applicable to contractors unless otherwise provided herein.

§109–43.001–14 Personal property.

For the purposes of this part personal property means property of any kind or type except real and related personal property; records; special source materials, which includes source materials and special nuclear material, and those other materials to which the provisions of DOE Order 5630.2 ''Control and Accountability of Nuclear Materials, Basic Principles'' apply, such as deuterium, enriched lithium, neptunium 237 and tritium, and atomic weapons and byproduct materials as defined in Section 11 of the Atomic Energy Act of 1954, as amended; enriched uranium in stockpile storage; and petroleum in the Strategic Petroleum Reserve and the Naval Petroleum Reserves.

Subpart 109–43.1—General Provisions

§109–43.101 Surveys.

The Director of Administration and heads of field offices are responsible for continuously surveying property under their control to assure efficient use and shall promptly identify and report excess property available for use elsewhere. See 109–25.109–1 for DOE policy on the conduct of management walk-through inspection tours to identify idle and unneeded equipment.

§109–43.102 Reassignment of property within executive agencies.

See Chapter XI of the DOE Accounting Practices and Procedures Handbook for preparation of the feeder reports upon which the consolidated DOE report of internal property reassignments is based.

§109–43.103 Agency utilization officials.

The Director, Property and Equipment Management Division, Headquarters, is designated as the DOE National Utilization Officer.

Subpart 109–43.3—Utilization of Excess

§109–43.301–50 Policy.

It is the policy of DOE to consider excess property as the first source of supply. In no case, however, will excess property be acquired unless a present or foreseeable program need exists for the property. In carrying out this policy, the objective of which is to obtain maximum effective and economical utilization of property already owned by the Federal Government, consideration should be given to such factors as—

(a) Nature and cost of any repairs required to restore excess equipment to a safe, dependable, and economical operating condition;

(b) Duration of the job on which the equipment will be used;

(c) Economic feasibility of ownership vs. loan or rental of the equipment. Frequency of use, particularly where the equipment will be needed only infrequently, is one of the factors which must be considered in determining the most economical method of acquisition; and

(d) Handling and transportation costs involved in acquisition of excess property.

§ 109–43.302–50 Utilization and disposal by contractors.

Heads of field offices may authorize contractors to perform the functions pertaining to utilization and disposal of excess property, provided such activities are in accordance with written policies and procedures which they have approved as being consistent with this part and those contained in FPMR Part 101–45 and Part 109–45.

§ 109–43.303–1 Acquisition of mercury.

Requests for 76 pound flasks of mercury, for use by DOE or its contractors, shall be forwarded to the Director, Supply Division, Oak Ridge Operations Office, Oak Ridge, Tennessee.

§ 109–43.306 Property not required to be reported.

To the extent practicable and economical, notification of availability of nonreportable excess property (See FPMR § 101–43.312) shall be made on an informal basis to other DOE installations in the area known to use such property. If no requirement is established within a reasonable time, usually not more than 30 days after the availability of the property is announced, the property will be considered excess to the needs of the DOE and made available to GSA as provided for in FPMR Part 101–43.306.

§ 109–43.311–1–50 DOE utilization screening.

(a) Prior to reporting excess personal property to GSA as required by FPMR § 101–43.311–1, reportable property, as identified in FPMR § 101–43.4801, shall be reported to the Property and Equipment Management Division (MA–422) through the DOE Reportable Excess Automated Property System (REAPS) for completion of the 30-day DOE screening period. Information regarding REAPS reporting and screening procedures are provided in instructions and directives issued by MA–422.

(b) In exceptional cases where time does not permit formal DOE utilization screening through REAPS, notification of the availability of excess property may be made by telegram, teletype or telephone, with due consideration to the additional costs involved.

(c) Concurrent utilization screening within DOE and to other Federal agencies generally shall not be permitted.

(d) If, after DOE circularization, reportable property is desired by another Federal agency, it may be transferred as provided in FPMR § 101–43.315–5(a).

§ 109–43.311–1–51 Procedures for effecting transfers within DOE.

In accordance with instructions provided for the operation of the REAPS program, transfers between DOE organizations and contractors shall be effected by completion of an SF–122, Transfer Order Excess Personal Property. Except for those contractors authorized by the DOE contracting office to execute transfer orders, transfers to DOE contractors must be approved by the cognizant DOE contracting officer for the contractors receiving the property.

§ 109–43.311–5 Property at installations due to be discontinued.

(a) In closing out installations or any activities where it is important that upon completion of the work the personnel be released and activities ended as quickly as possible in order to avoid large expenditures, arrangements may be made for expediting the utilization and disposal of excess inventories and other excess property.

(b) Personal and real property staffs of DOE field organizations shall work with appropriate GSA regional offices to develop a utilization and disposal program which takes into consideration all the factors involved, is expedited to the maximum degree, and is

mutually satisfactory and in the best overall interest of the Government. When closeout involves an activity which is not located geographically in a DOE installation, information concerning the situation shall be given to the appropriate regional administrator of GSA, as early as possible, by letter (copy to the Property and Equipment Management Division (MA–422)). The information should include the types of property available and indicate that the activity is to be discontinued, the scheduled date for the removal of personnel from the location, and the last dates when the property will be needed. The following guidelines are furnished for possible use, although variations may be used as long as agreement is reached with GSA and there is no conflict with DOE requirements except as noted in paragraph (b)(1) of this section:

(1) If a proposed expedited program provides for deviation from the DOE policy or procedural requirements, approval of the Director of Procurement and Assistance Management shall be obtained.

(2) Approval of the proposed program by the appropriate GSA regional office, when deviation from existing GSA regulations is involved, will be sufficient to validate the program. A copy of the approved program should be forwarded for information to the Property and Equipment Management Division (MA–422).

(3) In developing an expedited disposal program, property shall be determined to be excess to DOE before it is reported to GSA. Concurrent circularization of lists of DOE excess property within DOE and to other Federal agencies generally is not permitted.

(4) Summary catalog listings of certain categories of excess property, such as property in classes 48, 51, 55, 56, etc., showing estimated release dates, might be furnished GSA with good utilization results. Excess property in such classes as 23, 24, 32, 34 and 38 shall normally be listed by individual item with sufficient description for ready identification.

(5) In order to obtain maximum utilization of the property by other Federal agencies, the disposal program shall provide that the field organization will furnish assistance to GSA, upon request, to arrange for invitational inspections by Federal agency representatives.

(6) Upon request, DOE can provide assistance to GSA in its circularization of reportable items to other Federal agencies or in locating potential users within the government.

(7) Care should be exercised to be sure that orders from other Federal agencies for excess property are processed through GSA, as may be required by the GSA regional office concerned.

(8) Although it may be possible to arrange for expediting donations for educational, public health, or civil defense purposes, adequate time must be allowed for the screening of all donable property.

(9) Provisions should be made for accelerated release by GSA of excess property for disposal as surplus, particularly where there is little or no potential use by other Federal Agencies.

(10) Methods should be developed whereby last minute requests for surplus property, cataloged for an auction sale or listed in a sealed bid invitation and inspected by prospective bidders, can be kept to a minimum.

§109–43.312 Exceptions to reporting.

In addition to the categories of nonreportable property identified in FPMR §101–43.312 (a) through (g), the following property, when determined excess to a DOE installation, is not reportable and shall not be formally circularized within DOE or reported to GSA—

(h) Asphalt products in less than carload (LCL) quantities (roofing tile, paving materials);

(i) Cement and fabricated cement products in LCL quantities (concrete block, pumic block, cinder block, pipe and fittings);

(j) Fabricated clay products in LCL quantities (brick, tile, pipe and fittings);

(k) Fuels in LCL quantities (gasoline, diesel fuels, coal, coke and kerosene);

(l) Special purpose or site fabricated shelving, cabinets, shop tables, etc., of limited adaptability or with high cost of disassembly or transportation;

(m) Uncrated window glass; and

(n) 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.

§ 109–43.313–2 Printing, binding, and blankbook equipment and supplies.

DOE organizations shall report excess printing, binding and blankbook equipment to the Office of Administrative Services, Headquarters, for processing in accordance with the Joint Committee on Printing Regulations.

§ 109–43.313–50 Radioactively and chemically contaminated property.

Radioactively and chemically contaminated property should be handled in accordance with § 109–45.50.

§ 109–43.313–51 Automatic data processing equipment.

Automatic data processing equipment should be handled in accordance with FPMR §§ 101–36.3 and 109–36.3.

§ 109–43.313–52 Classified 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 prior to disposal, in accordance with instructions of the head of the field organization concerned. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the property.

§ 109–43.313–53 Naval gun mounts.

When a naval gun mount obtained from the Naval Sea Systems Command, Department of the Navy, becomes excess, it may be listed, circularized, and transferred within DOE in the same manner as other excess property. However, when a naval gun mount is determined to be excess to DOE, it shall be reported to the Department of the Navy, Naval Sea Systems Command, Washington, D.C. 20360, and shall be disposed of in accordance with instructions of that Department.

§ 109–43.313–54 Precious metals.

All precious metals which become excess to current or foreseeable requirements shall be reported to the Oak Ridge Operations Office. 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 reported, i.e., silver-bearing photo solutions, scrap film, or other low grade silver scrap should not be reported. (See § 109–27.53)

§ 109–43.313–55 Shielding material.

All excess movable shielding material of any type will be circularized within DOE using normal excessing procedures. However, prior to disposal outside DOE, the Property and Equipment Management Division (MA–422) shall be advised concerning the types and quantities which remain available.

§ 109–43.313–56 Property in which the Government has an interest.

Personal property in which the Government has an interest means: (a) Government-owned property which is available for exchange or sale, and (b) property leased with an option to purchase. Such property shall be circularized within DOE in accordance with § 109–43.311–1–50 for possible utilization whenever it is practicable to do so, considering the contract terms, cost in relation to remaining useful life, location of item, purchase option time remaining, etc.

§ 109–43.313–57 Lead.

Excess lead and lead bearing scrap, such as batteries, with the exception of radioactively contaminated lead, should be reported to the Idaho Operations Office for reclaiming and subsequent redistribution within DOE from the DOE lead bank. Only quantities of 40,000 pounds or more should be reported. The Idaho Operations Office will furnish shipping instructions upon request.

§ 109–43.315–5 Procedure for effecting transfers.

In accordance with a DOE agreement with GSA, execution of transfer orders by a DOE official is not required in

those cases where heads of field offices have authorized contractors to perform this function, and GSA has been notified of such authorization. GSA regional offices will furnish the cognizant DOE field organization a copy of each transfer ordered received from contractors. This copy of the transfer order will be reviewed by the cognizant DOE field organization to determine if the contractor has been authorized to submit orders for excess property. If the contractor submitting the transfer order to the GSA regional office has not been authorized in writing to submit such orders, GSA will not honor such requests unless they are subsequently executed by an appropriate DOE official.

§ 109–43.317–1 Cost of care and handling.

DOE field organizations and contractors shall comply with the provisions of Chapter III of the DOE Accounting Practices and Procedures Handbook as they relate to billings for direct costs incurred in the transfer of excess property.

§ 109–43.317–2 Proceeds.

For DOE procedures on the handling of proceeds from transfer of excess property to another Government agency with reimbursement, see Chapter III of the DOE Accounting Practices and Procedures Handbook.

§ 109–43.319 Use of excess property on cost-reimbursement type contracts.

(b) It is DOE policy for contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in FPMR § 101–43.319(b) does not apply to such contracts and the acquisitions of Government excess personal property by these contractors are not subject to the annual reporting requirements of FPMR § 101–43.4701(c). The procedures prescribed in § 109–43.315–5 for execution of transfer orders apply.

§ 109–43.321 Certification of non-Federal agency screeners.

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

§ 109–43.503 Holding agency responsibilities.

(a) Property which remains excess after utilization screening within the general foreign geographical area where the property is located should be reported by the accountable field office or Headquarters program organization to the Property and Equipment Management Division (MA–422) for consideration for return to the U.S. for further utilization within DOE, by other Government agencies, or for donation, based on such factors as cost, residual value, usefulness in ongoing or future programs, condition, and cost of transportation.

(b) [Reserved]

§ 109–43.504–50 Disposition of property not selected for return to the United States.

Property not selected for return to the United States for utilization within DOE or the Government or for donation in accordance with FPMR § 101–44.7 shall be disposed of in accordance with 109–45.5105.

Subpart 109–43.47—Reports

§ 109–43.4701 Performance reports.

(a) The DOE report of the utilization of domestic excess personal property as required in FPMR § 101–43.4701(a) is submitted to GSA by the Property and Equipment Management Division (MA–422). DOE field organizations and contractors reporting under the DOE financial reporting system should furnish this information to the Office of Controller in accordance with Chapter III of the DOE Accounting Practices and Procedures Handbook. Those activities which do not report under the DOE financial reporting system shall submit an SF 121 directly to MA–422 by November 15.

(b) [Reserved]

(c) The report required in FPMR § 101–43.4701(c) shall be submitted to the

Property and Equipment Management Division (MA–422) within 45 days after the close of each fiscal year, in the format illustrated below. This reporting requirement does not apply to excess property acquired by management and operating contractors.

Name and address of recipient	Recipient's status	Original cost of property	Federal supply classification group

Subpart 109–43.51—Utilization of Personal Property Held for Facilities in Standby

§ 109–43.5100 Scope of subpart.

This subpart supplements FPMR Part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

§ 109–43.5101 Definition.

Facility in standby is a significant segment of plant and equipment, such as a complete plant or section of a plant, which is neither ''in service'' or declared ''excess''.

§ 109–43.5102 Policy.

Procedures and practices shall assure economical and efficient utilization of property associated with facilities placed in standby status as provided for in this subpart.

§ 109–43.5103 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 startup criteria, periodic reviews (no less than biennially) to determine need for continued retention of property, and special reviews when a change in startup time is made or when circumstances warrant. Such procedures should recognize that:

(a) Generally, 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 onsite or be disposed of as excess.

§ 109–43.5104 Utilization of property in facilities in standby status.

(a) Procedures and practices shall require that property comprising the plant in standby, to the extent consistent with program requirements reflected by the startup criteria, be considered as a source of supply prior to procurement. Such procedures should provide for:

(1) Furnishing potential users and procurement officers or some other responsible screening office with listings of equipment and other significant property holdings available for loan or transfer, and

(2) Removal and use elsewhere of installed equipment which can be replaced or returned within the established startup criteria.

(b) In addition to the above procedures, DOE organizations and contractors should encourage informal contacts between their technical staffs and those engaged in similar work at other DOE locations for the purpose of ascertaining the availability of Government property to meet their program requirements.

PART 109–44—DONATION OF PERSONAL PROPERTY

Sec.
109–44.000 Scope of part.

Subpart 109–44.7—Donations of Property to Public Bodies

109–44.701 Findings justifying donation to public bodies.

Subpart 109–44.47—Reports

109–44.4701 Reports.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25593, June 21, 1984, unless otherwise noted.

§109–44.000 Scope of part.

This part implements and supplements FPMR Part 101–44, Donation of Personal Property. For donation of surplus personal property in foreign areas, see §109–45.51.

Subpart 109–44.7—Donations of Property to Public Bodies

§109–44.701 Findings justifying donation to public bodies.

The Director of Administration and heads of field offices for their respective organizations shall appoint officials to make findings and reviews as required in FPMR §101–44.7.

Subpart 109–44.47—Reports

§109–44.4701 Reports.

The report of the donation of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR §101–43.4701. See §109–43.4701 for DOE reporting requirements.

PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

109–45.000 Scope of part.

Subpart 109–45.1—General

109–45.101–50 Applicability.
109–45.103–1 Responsibilities of the General Services Administration.
109–45.103–2 Responsibilities of holding agencies.
109–45.105–3 Exemptions.

Subpart 109–45.3—Sale of Personal Property

109–45.301–50 Sales by DOE contractors.
109–45.302–50 Sales to DOE and contractor employees.
109–45.303–50 Contractor reporting of property for sale.
109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and award of contract.
109–45.304–51 Documentation.
109–45.307 Proceeds from sales.
109–45.309–50 Unserviceable property (salvage and scrap).
109–45.310 Antitrust laws.
109–45.316 Report on identical bids.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

109–45.501–1 General.
109–45.502–1 Reviewing authority.

Subpart 109–45.47—Reports

109–45.4701 Performance reports.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5001 Scope of subpart.
109–45.5002 Policy.
109–45.5003 Responsibilities.
109–45.5003–1 Development of criteria for utilization and disposal outside DOE.
109–45.5003–2 Implementation of policy.
109–45.5004 Procedures.
109–45.5004–1 Suspect personal property.
109–45.5004–2 Handled as uncontaminated equipment.

Subpart 109–45.51—Disposal of Excess 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 Responsibilities.
109–45.5104–1 Director of Procurement and Assistance Management.
109–45.5104–2 Heads of offices in foreign areas.
109–45.5105 Disposal.
109–45.5105–1 General.
109–45.5105–2 Methods of disposal.
109–45.5106 Reports.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25594, June 21, 1984, unless otherwise noted.

§109–45.000 Scope of part.

This part implements and supplements FPMR 101–45, Sale, Abandonment, or Destruction of Personal Property, but does not apply to—

(a) Properties which are sold or otherwise disposed of pursuant to special statutes, or;

(b) Disposal of personal property in foreign areas (see §101–45.51).

Subpart 109–45.1—General

§ 109–45.101–50 Applicability.

The provisions of FPMR 101–45 and this part are applicable to contractors authorized to dispose of surplus personal property.

§ 109–45.103–1 Responsibilities of the General Services Administration.

GSA regional offices are responsible for the conduct of sales of surplus and replacement property in the custody of DOE direct operations, except that DOE will continue to sell replacement property where trade-in offers are also involved in the transaction.

§ 109–45.103–2 Responsibilities of holding agencies.

See §§ 109–45.105–3 and 109–45.3 for policy and procedures governing the sale of personal property by DOE contractors.

§ 109–45.105–3 Exemptions.

The General Services Administration, by letter dated May 28, 1965, authorized DOE contractors to sell contractor inventory, including replacement property. This exemption is for sales of contractor inventory only. All surplus property in the custody of DOE direct operations (except replacement property where trade-in offers are involved) will be reported to GSA in accordance with FPMR § 101–45.303.

Subpart 109–45.3—Sale of Personal Property

§ 109–45.301–50 Sales by DOE contractors.

Sales of surplus contractor inventory will be made by DOE contractors when heads of field offices determine that it is in the best interests of the Government to do so.

§ 109–45.302–50 Sales to DOE and contractor employees.

(a) Employees of DOE and DOE contractors shall be afforded the same opportunity to acquire Government-owned property as is afforded the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly—

(1) Participated in the determination to dispose of the property;

(2) Participated in the preparation of the property for sale;

(3) Participated in determining the method of sale; or

(4) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the property.

(b) Special clothing and other articles of personal property acquired for the exclusive use of and fitted to an individual employee, when not otherwise usable by, and in all respects excess to the needs of, the holding organization, may be sold to DOE or contractor employees at the best price obtainable in the event of termination of their employment or their permanent assignment to duties not requiring such clothing or property.

§ 109–45.303–50 Contractor reporting of property for sale.

GSA normally initiates sales action from the items remaining as surplus after utilization and donation screening. In order to assure no misunderstanding at GSA regional offices as to who is to perform the sales function for contractor inventory, each Standard Form 120 report forwarded to GSA shall bear a capitalized notation in a prominent place reading either ''TO BE SOLD BY GSA'' or ''NOT TO BE SOLD BY GSA'' as appropriate.

§ 109–45.304–2–50 Negotiated sales and negotiated sales at fixed prices.

(a) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting officer determines and documents that the use of this method of sale is essential to expeditious contract closeout, or is otherwise justified on the basis of circumstances enumerated below, provided that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, 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 property was offered for competitive sale. Specific conditions justifying negotiated sales are when—

(1) No acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(2) 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 States, territories, 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 obtained;

(4) The specialized nature and limited use potential of the property would create negligible bidder interest;

(5) Removal of the 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) Negotiated sales at fixed prices. When determined to be in the best interests of the Government, heads of field offices may authorize fixed-price sale of contractor inventory by DOE contractors provided (1) the reasonable recovery value of the property to be sold to any one purchaser at any one time does not exceed $1000, (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 were employed and the prices have been approved by a reviewing authority designated by the heads of field offices, and (4) the warranty prescribed in §109–45.302–50(a) is obtained when sales are made to employees.

§109–45.304–6 Reviewing authority.

The reviewing authority required under FPMR §101–45.304–6 may consist of one or more persons designated by the head of the field office who will be responsible for providing an adequate and independent review of proposed sales for the purpose of determining whether—

(a) The method of sale is in accordance with established policies and procedures; and

(b) Proceeds constitute a reasonable return for the property sold.

§109–45.304–50 Processing bids and award of contract.

The procedures established in Federal Acquisition Regulation 14.4 and DEAR 914.4 shall be made applicable to execution, receipt, safeguarding, opening, abstracting, 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. For mistakes in bids, see FPMR 101–45.8.

§109–45.304–51 Documentation.

Files pertaining to sales shall contain copies of all documents necessary to provide a complete record of the transaction and as a minimum shall include the following:

(a) A copy of request for proposals if written proposals are employed.

(b) A list of prospective bidders contacted.

(c) An abstract of proposals received, whether oral or written.

(d) Copies of written proposals or confirming proposals received, including Standard Forms 119 (see FPMR §101–45.313–9) which have been received from prospective bidders, together with other relevant information.

(e) A notation concerning basis for determination that proceeds constitute a reasonable return for property sold.

(f) Full and adequate justification for not advertising for competitive bids when the fair market value of property sold in this manner in any one case exceeds $1,000.

(g) A notation concerning any award made to other than the high bidder.

(h) The approval of reviewing authority when required.

(i) A copy of notice of award.

(j) All related correspondence.

(k) In the case of auction or spot bid sales, the following additional information should be included:

(1) A list of items or lots sold indicating book cost and sales price for each item or lot sold.

(2) A copy of advertising literature distributed to prospective bidders.

(3) A summary listing of advertising by means of newspapers, radio, television, public posting, etc.

(4) The names of prospective bidders who attended sale if list was made.

(5) A copy of any pertinent contract for auctioneering services and related documents or appropriate reference to files containing such documents.

(6) A record of deposits and payments made or appropriate reference to files containing such records.

§ 109–45.307 Proceeds from sales.

DOE installations shall comply with the provisions of Chapter IV of the DOE Accounting Practices and Procedures Handbook.

§ 109–45.309–50 Unserviceable property (salvage and scrap).

(a) A continuous cleanup program shall be maintained at all DOE installations to locate, efficiently handle, and promptly dispose of unserviceable property (salvage and scrap). Property inventories and construction, wrecking, dismantling and other projects which might produce scrap, should be regularly reviewed, particularly for metals and other items which offer potential as marketable materials and for economic returns to the Government. (See FPMR Parts 101–42 and Part 109–42 for recovery of precious metals and reporting requirements.)

(b) Scrap metals shall be segregated to the maximum economical extent consistent with good industrial practice.

(c) Scrap metal which is contaminated with radioactive material and/or chemically hazardous materials shall be segregated and appropriately marked at the source as to type and degree of contamination and shall be controlled and disposed of in accordance with application regulations. (See Subpart 109–45.50).

§ 109–45.310 Antitrust laws.

Selling organizations shall submit to the Office of the General Counsel, with a copy to the Director of Procurement and Assistance Management, the report on proposed sales of surplus personal property with an acquisition cost of $3,000,000 or more, or a patent, process, technique, or invention, regardless of cost. Information to be included is contained in FPMR § 101–45.310.

§ 109–45.316 Report on identical bids.

Selling organizations shall forward the report on identical bids required by FPMR § 101–45.316 to the Office of the General Counsel, with a copy to the Director of Procurement and Assistance Management.

Subpart 109–45.5—Abandonment or Destruction of Surplus Property

§ 109–45.501–1 General.

(a) The finding required by FPMR § 101–45.501–1(a) that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale shall be in writing and shall be made by an official designated by the head of the field office concerned.

§ 109–45.501–2 Reviewing authority.

The head of the field office concerned will be the reviewing authority for approval to abandon or destroy property with an acquisition cost of more than $1,000.

Subpart 109–45.47—Reports

§ 109–45.4701 Performance reports.

The report of the sale or other disposition of surplus personal property is furnished to GSA in combination with the report of the utilization of domestic excess personal property required in FPMR § 101–43.4701. See § 109–43.4701 for DOE reporting requirements.

Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

§ 109–45.5001 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.

§ 109–45.5002 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, such contaminated personal property shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure to the public and contamination in the environment. In special cases where Federal regulations do not exist or apply, appropriate national consensus standards shall be used.

§ 109–45.5003 Responsibilities.

§ 109–45.5003–1 Development of criteria for utilization and disposal outside DOE.

The Assistant Secretary for Policy, Safety and Environment (PE–1) has responsibility for the development of criteria for utilization and disposal of excess and surplus radioactively and chemically contaminated personal property outside of DOE.

§ 109–45.5003–2 Implementation of policy.

Heads of field offices shall overview the implementation of policy as set forth in § 109–45.5002 and approve or disapprove requests for utilization and disposal outside of DOE.

§ 109–45.5004 Procedures.

§ 109–45.5004–1 Suspect personal property.

(a) Each excess item of personal property (including scrap), having a history of use in an area where exposure to radioactively or chemically contaminated materials 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) Prior to utilization or disposal outside DOE, with due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of items of excess or surplus property to the lowest practicable level.

(c) If contamination is suspect and the property is of such size, construction, or location as to make the contamination inaccessible for the purpose of measurement, such property shall not be utilized or disposed of outside DOE through normal channels.

§ 109–45.5004–2 Handled as uncontaminated equipment.

If monitoring of suspect equipment indicates that the contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated equipment, provided the guidance in § 109–45.5004–1(b) 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 for shipment of radioactive materials (49 CFR parts 171–179, inclusive). In addition, when any contaminated equipment is circularized within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

Subpart 109–45.51—Disposal of Excess 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 the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471). Title IV of that Act entitled ''Foreign Excess Property'' provides that, except where commitments exist under previous agreements, all excess property located in foreign areas shall be disposed of by the owning agency, and directs that the head of such agency conform to the foreign policy of the United States in making such disposals.

§ 109–45.5102 General.

Disposal of Government-owned 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:

(a) *Foreign* means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) *Foreign service post* means the local diplomatic or consular post in the area where the excess property is located.

§ 109–45.5104 Responsibilities.

§ 109–45.5104–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management develops and interprets policies, principles, and general procedures for the disposal of excess property in foreign areas.

§ 109–45.5104–2 Heads of offices in foreign areas.

Heads of DOE foreign offices—

(a) Are authorized to handle foreign excess disposal matters in accordance with Title IV, ''Foreign Excess Property'' of the Federal Property and Administrative Services Act of 1949, as amended and this subpart;

(b) Shall refer to the Property and Equipment Management Division (MA–422), any requests for advice or approval of the State Department on proposed disposals of excess property in foreign areas for review, coordination and handling through appropriate channels; and

(c) Shall approve the exchange or lease of foreign excess property when in their opinion such action is clearly in the best interest of the Government as provided in § 109–45.5105–2(b).

§ 109–45.5105 Disposal.

§ 109–45.5105–1 General.

(a) Foreign excess property which is not required for transfer within DOE or to other U.S. Government agencies 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 property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2(c). Most foreign governments have indicated to the 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 problems. 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, D.C. If the problem is to be presented to the State Department in Washington, D.C., it shall be referred through appropriate administrative channels to the Director of Procurement and Assistance Management, for review, coordination and handling.

(b) Foreign excess property which is not transferred for use may be transferred to other U.S. Government agencies for disposal. This procedure may often prove advantageous, particularly when only small amounts of property are involved or when personnel of the other agencies are generally engaged in disposal activities.

§ 109–45.5105–2 Methods of disposal.

(a) Sales of foreign excess shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of surplus foreign excess 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 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, or cotton or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), determines or 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 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 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 receipt prior to the release of the 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 property, including small arms and machine guns; artillary and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellents 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 classified from the standpoint of military security (United States Munitions List, 22 CFR 121.01), are subject to restrictions as to disposal. 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 property which had a total acquisition cost of $250,000 or more, plans for such sale shall be reported to the Property and Equipment Management Division (MA–422) in ample time to allow considerations of possible foreign policy aspects and advice thereon from the State Department. (See § 109–45.5106(a)). All proposed sales, regardless of the total acquisition cost of the property involved, which the head of the DOE foreign office believes might have a significant effect on the economic or political situation in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus 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).

(c) Foreign excess or surplus property (including waste, salvage, and scrap) may be donated, abandoned, or destroyed provided (1) the property has no commercial value, or the estimated cost of its care and handling would exceed the estimated proceeds from its sale, and (2) a written finding to that effect is made and approved by the head of the DOE foreign office. No 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 of governments. Foreign excess 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 this means and approval by the head of the DOE foreign office is required. 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.

§ 109–45.5106 Reports.

(a) Proposed sales of foreign excess property having an acquisition cost of $250,000 or more reported to the Property and Equipment Management Division (MA–422) should present all pertinent data, including the following:

(1) The description of property to be sold, including—

(i) Identification of property (description should be in terms understandable to persons not expert in technical nomenclature); property covered by the Munitions List and regulations pertaining thereto (as published in 22 CFR 121.01) should be clearly indicated;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (i.e., 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 proposed agreement).

(4) Any restrictions on use of property to be sold (such as retransfer of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms.

(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 the DOE Accounting Practices and Procedures Handbook.

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 109–46.4—Disposal

109–46.406 Records.
109–46.407 Reports.

AUTHORITY: Sec. 644, Pub. L. 95–91, Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25597, June 21, 1984, unless otherwise noted.

§ 109–46.000 Scope of part.

This part implements and supplements FPMR part 101–46.

§ 109–46.000–50 Applicability.

Except as set forth below, the requirements of FPMR part 101–46 and this part are not applicable to DOE contractors. Contractors shall comply with the following requirements:

FRMR § 101–46.201
FPMR § 101–46.202(a)
FPMR § 101–46.202(d) (1), (2), (4), (5), (6), (7), and (10)
FPMR § 101–46.202(e)
FPMR § 101–46.401
DOE–PMR § 109–46.406

Subpart 109–46.4—Disposal

§ 109–46.406 Records.

Contractor shall prepare and maintain such records as will show full compliance with the applicable provisions of FPMR part 101–46.

§ 109–46.407 Reports.

The report of exchange/sale transactions required by FPMR § 101–46.407 shall be submitted through normal administrative channels to the Property and Equipment Management Division (MA–422) within 60 days after the close of the fiscal year. Negative reports are required.

PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.001–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101–6 Transfer to other Federal agencies.
109–48.102–4 Proceeds.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25598, June 21, 1984, unless otherwise noted.

§ 109–48.000 Scope of part.

This part implements and supplements FPMR Part 101–48, Utilization,

Donation, or Disposal of Abandoned and Forfeited Personal Property.

§109–48.001–50 Applicability.

The provisions of FPMR 101–48 and this part are applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

§109–48.101–6 Transfer to other Federal agencies.

(a)–(c) [Reserved]

(d) Transfer orders covering requests for transfers of forfeited or voluntarily abandoned distilled spirits, wine and malt beverages for medicinal, scientific or mechanical purposes shall be forwarded through normal administrative channels for signature by the Property and Equipment Management Division (MA–422) and for subsequent forwarding to GSA for release.

§109–48.102–4 Proceeds.

After retention of any monies received from disposal of abandoned or forfeited property for the three-year period specified in FPMR §101–48.102–4 with no claim being filed, such monies shall be deposited as provided in Chapter IV of the DOE Accounting Practices and Procedures Handbook.

PART 109–50—PROGRAMMATIC DISPOSAL OF DOE PROPERTY

Sec.

109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—General

109–50.101 Authority.

Subpart 109–50.3—Used Energy-Related Laboratory Equipment Grant Program

109–50.300 Scope of subpart.
109–50.301 Applicability.
109–50.302 General.
109–50.303 Authority.
109–50.304 Definitions.
109–50.305 Responsibilities and authorities.
109–50.305–1 Director of Procurement and Assistance Management.
109–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.
109–50.305–3 Heads of field offices.
109–50.305–4 Contracting officers.
109–50.305–5 Excess used energy-related laboratory equipment holding organizations.
109–50.305–6 Screening locations.
109–50.306 Types of equipment which may be granted.
109–50.307 Types of equipment which may not be granted.
109–50.308 Procedure.
109–50.309 Reports.
109–50.310 Screening locations.

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Responsibilities and authorities.
109–50.402–1 Director of Procurement and Assistance Management.
109–50.402–2 Heads of Headquarters program organizations.
109–50.402–3 Heads of field offices and contracting officers.
109–50.403 Programmatic disposal of DOE property in mixed facilities.
109–50.403–1 Submission of proposals.
109–50.403–2 Need to establish DOE program benefit.
109–50.404 Notification.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25598, June 21, 1984, unless otherwise noted.

§109–50.000 Scope of part.

This part provides guidance on the authorities, policies, and procedures for the disposal of DOE property for programmatic purposes.

§109–50.001 Applicability.

The provisions of this part 109–50 apply to direct DOE operations, but do not apply to contractors unless specifically provided in the appropriate subpart.

Subpart 109–50.1—General

§109–50.101 Authority.

Programmatic disposals of DOE property generally are made under the authority and subject to the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011), the Energy Reorganization Act of 1974 (42 U.S.C.

5801), the Department of Energy Organization Act (42 U.S.C. 7101), and other special laws which provide authority for DOE program activities.

Subpart 109–50.3—Used Energy-Related Laboratory Equipment Grant Program

§ 109–50.300 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.

§ 109–50.301 Applicability.

This subpart is applicable to direct operations and to contractors.

§ 109–50.302 General.

DOE, to encourage research in the field of energy, awards grants of used energy-related laboratory equipment to eligible institutions for use in energy-oriented educational programs. Under the Used Energy-Related Laboratory Equipment Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and contractors may be made to eligible institutions prior to reporting the equipment to GSA for utilization.

§ 109–50.303 Authority.

The used Energy-Related Laboratory Equipment Grant Program is conducted under the authority of Article 31 of the Atomic Energy Act of 1954, as amended, section 103, paragraph 10, of the Energy Reorganization Act of 1974, and Title III of the Department of Energy Organization Act.

§ 109–50.304 Definitions.

As used in this subpart the following definitions apply:

(a) *Book value* means acquisition cost less depreciation.

(b) *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 educational programs.

(c) *Energy-oriented education program* means one that deals partially or entirely in energy or energy-related topics.

(d) *DOE Financial Assistance Rules* (10 CFR part 600) is the Department of Energy directive which establishes a uniform administrative system for application, awards, and administration of assistance awards, including grants and cooperative agreements.

§ 109–50.305 Responsibilities and authorities.

§ 109–50.305–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management establishes policies and procedures for the award and administration of grants.

§ 109–50.305–2 Director, Office of Field Operations Management, Office of Energy Research.

The Director, Office of Field Operations Management, Office of Energy Research—

(a) Has program responsibility for the Used Energy-Related Laboratory Equipment Grant Program;

(b) Issues general instructions and information on the program to institutions;

(c) Reviews and, where appropriate, approves requests from institutions for used equipment where the book value of an item of equipment exceeds $100,000 or where the cumulative book value of used equipment grants to any one institution exceeds $100,000; and

(d) Issues annual summary reports of equipment granted under this program to field and Headquarters organizations. Advises when grants to individual institutions approach the $100,000 book value cumulative limit.

§ 109–50.305–3 Heads of field offices.

Heads of field offices shall establish procedures for review and evaluation of equipment grant proposals in accordance with this subpart.

§ 109.50.305–4 Contracting officers.

Contracting Officers—

(a) Award energy-related laboratory equipment grants under this program

in accordance with the DOE Financial Assistance Rules and program instructions issued by the Director, Office of Energy Research and this subpart;

(b) Forward a copy of each approved and accepted grant to the Office of Energy Research; and

(c) Forward to the Office of Field Operations Management, Office of Energy Research, for approval prior to award of grant, requests from institutions for used equipment where the book value of the equipment exceeds $100,000 or where the cumulative book value of grants to an institution exceeds $100,000.

§109–50.305–5 Excess used energy-related laboratory equipment holding organizations.

Each DOE and contractor organization holding excess used energy-related laboratory equipment shall forward copies of excess reports (SF–120) to screening locations cited in §109–50.310 after DOE screening through the REAPS program (See §109–43.311–1–50).

§109–50.305–6 Screening locations.

Organizations designated in §109–50.310 shall retain current files of reports of excess used energy-related laboratory equipment for review by eligible institutions.

§109–50.306 Types of equipment which may be granted.

Examples of types of equipment which may be granted under the Used Energy-Related Laboratory Equipment Grant Program are listed below. These examples are merely illustrative and not inclusive.

—Radiation detectors, monitors, scalers, and counters
—Nuclear reactors and accelerators
—Neutron howitzers and generators
—Critical and subcritical assemblies
—Bubble and cloud chambers
—Dosimeters, survey meters, radiometers, and spectroscopes
—Radiation shields and reactor associate components
—Mass spectrometers, infrared spectrometers, and ultraviolet spectrometers
—Gas and liquid chromatographs
—Ammeters, voltmeters, electrometers
—Linear and pulse-height analyzers
—Power supplies
—Catalyst test units
—Distillation columns
—Temperature and pressure recorders
—Ion control gauges
—Gas tracers and analyzers
—Solar collectors and heliometers

§109–50.307 Types of equipment which may not be granted.

Types of equipment which will not be granted include—

(a) Any equipment determined to be required by DOE direct operations or DOE contractors;

(b) General supplies, such as Bunsen burners, hoods and work benches; furniture; office equipment, such as typewriters, adding machines, and duplicating machines; drafting and office supplies; refrigerators; tools; presses, lathes, furnaces, hydraulic and mechanical jacks, cranes and hoists; and computing equipment; or

(c) Any equipment which has been obtained as excess from another Federal agency.

§109–50.308 Procedure.

(a) After completion of DOE utilization screening, copies of excess reports (SF 120) of used energy-related laboratory equipment will be forwarded by each holding organization to the sites listed in §109–50.310 for use by eligible institutions in reviewing and earmarking specific equipment. These reports will be separately prepared and identified with the caption ''Used Energy-Related Laboratory Equipment.''

(b) The following periods have been established during which time equipment will remain available to this program prior to reporting it to the General Services Administration for utilization by other Federal agencies:

(1) Sixty days from the date DOE utilization screening is completed and the report is issued to screening locations, to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional sixty 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.

(c) Upon approval of the proposal, the issuance of the grant instrument and acceptance by the institution are deemed to constitute transfer of title.

(d) A Standard Form 120, accompanied by a copy of the completed grant, shall be used to drop accountability of the granted equipment from the financial records.

(e) The cost of care and handling of 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.

§ 109–50.309 Reports.

(a) In addition to the copy of the awarded grant required to be forwarded in accordance with § 109–50.305–4(b), each awarded grant shall be reported in the Procurement Assistance Data System.

(b) Heads of field offices shall include grants made under this program in the annual report of property transferred to non-Federal recipients, as required by FPMR § 101–43–4701(c).

§ 109–50.310 Screening locations.

The locations shown on the following pages shall retain current files of SF–120s, reports of excess used energy-related laboratory equipment, for review by eligible institutions. After completion of DOE utilization screening through REAPS, DOE activities shall forward copies of SF 120s covering used energy-related laboratory equipment to these locations.

CALIFORNIA

Property Management Office, Atomics International Division, Rockwell International Corporation, 8900 DeSoto Avenue, Canoga Park, California 91305

Property Manager, Lawrence Livermore Laboratory, University of California, Livermore, California 94720

Business Services, L–53, Lawrence Livermore Laboratory, University of California, Livermore, California 94550

COLORADO

Department of Energy, P.O. Box 26247, Belmar Branch, 1075 S. Yukon, Lakewood, Colorado 89226

Department of Energy, Rocky Flats Area Office, P.O. Box 928, Golden, Colorado 80401

DISTRICT OF COLUMBIA

Department of Energy, ER–44 Room 3F–053, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Dr. Larry L. Barker, (202) 252–6512

Department of Energy, MA–422, Room 8H–089, 1000 Independence Avenue., SE. Washington, DC 20585. Attn: Mr. J. H. Mackey, (202) 252–8261

GEORGIA

Department of Energy, 1655 Peachtree Street, NE., 8th Floor, Atlanta, Georgia 30309

IDAHO

EG & G, Property Management Branch, 539 Second Street, Idaho Falls, Idaho 83401

Department of Energy, Idaho Operations Office, Property Management and Administrative Services Branch, 550 Second Street, Idaho Falls, Idaho 83401

ILLINOIS

Argonne National Laboratory, Plant Operations, Plant Management, 9700 South Cass Avenue, Argonne, Illinois 60439

IOWA

Ames Laboratory, Iowa State University, Materials Handling and Property Office, Room 152, Research Building, Ames, Iowa 50010

MISSOURI

Department of Energy, 23rd Floor, 324 E. 11th St., Kansas City, Missouri 64106

Department of Energy, Kansas City Area Office, P.O. Box 202, Kansas City, Missouri 64141

NEVADA

Department of Energy, Nevada Operations Office, Contract and Property Division, Property Management Branch, P.O. Box 14100, Las Vegas, Nevada 89114

NEW MEXICO

Sandia Laboratories, Office of University Relations, P.O. Box 5800, Albuquerque, New Mexico 87115

NEW YORK

Brookhaven National Laboratory, Supply and Materials Office, Upton, Long Island, New York 11973

OHIO

Monsanto Research Corporation, Mound Laboratory, Property Management, P.O. Box 32, Miamisburg, Ohio 45342

PENNSYLVANIA

Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 10102

SOUTH CAROLINA

E. I. Dupont de Nemours & Co., Savannah River Laboratory, University Relations Office, Aiken, South Carolina 29801

TENNESSEE

Oak Ridge National Laboratory, Material and Services, P.O. Box X, Oak Ridge, Tennessee 37830

TEXAS

Department of Energy, P.O. Box 5800, 2626 Mockingbird Lane, Dallas, Texas 75235

WASHINGTON

Rockwell Hanford, Excess Utilization, Building 1167–A, P.O. Box 250, Richland, Washington 99352

Subpart 109–50.4—Programmatic Disposal to Contractor of DOE Property in a Mixed Facility

§ 109–50.400 Scope of subpart.

This subpart contains guidance 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:

(a) *DOE property* is the DOE-owned personal property in a mixed facility.

(b) *Contractor* is the operator of the mixed facility.

(c) *Mixed facility* is 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 Responsibilities and authorities.

§ 109–50.402–1 Director of Procurement and Assistance Management.

The Director of Procurement and Assistance Management is authorized to approve proposals for the programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–2 Heads of Headquarters program organizations.

Heads of Headquarters program organizations shall review and forward to the Property and Equipment Management Division (MA–422) for approval, proposals for programmatic disposal of DOE personal property in a mixed facility to the contractor operating that facility.

§ 109–50.402–3 Heads of field offices and contracting officers.

Heads of field offices and contracting officers shall submit proposals involving programmatic disposals of DOE property in mixed facilities through appropriate administrative channels to the cognizant Headquarters program organization for review and forwarding for approval.

§ 109–50.403 Programmatic disposal of DOE property in mixed facilities.

§ 109–50.403–1 Submission of proposals.

Proposals involving programmatic disposals for DOE personal property in mixed facilities to contractors operating the facility shall be forwarded through the appropriate program organization to the Property and Equipment Management Division (MA–422) for review and processing for approval. Each such request for review and approval 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 character, condition and present use of the DOE property involved, as well as its acquisition cost, accumulated depreciation, and net book value;

(c) The programmatic benefits which would acrue 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 property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal (covering for example,

(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.).

§ 109–50.403–2 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 a 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 his entry into the field.

§ 109–50.404 Notification.

The Under Secretary will be advised prior to any disposal which is considered sensitive.

SUBCHAPTER I—INDUSTRIAL PLANT EQUIPMENT

PART 109–51—LOANS OF INDUSTRIAL PLANT EQUIPMENT FROM THE DEFENSE INDUSTRIAL PLANT EQUIPMENT CENTER

Sec.

109–51.000 Scope of part.
109–51.001 Policy.
109–51.002 Memorandum of Agreement.
109–51.003 General provisions.
109–51.004 DIPEC Handbook.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25601, June 21, 1984, unless otherwise noted.

§109–51.000 Scope of part.

This part prescribes the policy and conditions for loans of industrial plant equipment (IPE) from the Department of Defense General Reserve under the management of the Defense Industrial Plant Equipment Center (DIPEC) and makes reference to the DOE DIPEC Handbook which prescribes procedures for arranging loans of IPE from DIPEC.

§109–51.001 Policy.

Since loan of DIPEC equipment is at no cost, except for packing, crating, handling, and transportation charges, DOE field organizations and contractors are encouraged to use DIPEC as a source of industrial plant equipment in lieu of purchasing such equipment.

§109–51.002 Memorandum of Agreement.

An agreement between DOE and the Defense Logistics Agency establishes the policies, procedures and conditions by which DOE may obtain loans of IPE from DIPEC. (Exhibit A of the DIPEC Handbook).

§109–51.003 General provisions.

(a) DOE field organizations and contractors may requisition IPE on a loan basis for periods up to five years. The IPE loan period may be extended on mutual agreement between DIPEC and the DOE field office involved.

(b) DOE has a 30-day period to accept or reject IPE placed on hold by DIPEC.

(c) DOE field organizations or contractors will pay costs of transportation, dismantling, crating and handling of IPE from and to DOD.

(d) On completion of the loan period, the DOE field organization or contractor shall return the DIPEC–IPE in the same condition as received except for fair wear and tear.

(e) DOE is required under terms of the agreement to decontaminate IPE prior to return or replace the equipment with an equivalent item.

§109–51.004 DIPEC Handbook.

The DIPEC Handbook is available through field organizations or by request to the Property and Equipment Management Division (MA–422). The Handbook cites the procedures for arranging loan of IPE, illustrates the forms used and provides a bibliography of DIPEC publications which list the available IPE by type of equipment and by DIPEC control numbers.

SUBCHAPTER J [RESERVED]

SUBCHAPTER K—GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

PART 109–60—MANAGEMENT OF GOVERNMENT PROPERTY IN THE POSSESSION OF OFF-SITE CONTRACTORS

Sec.
109–60.000 Scope and applicability of part.
109–60.001 Definitions.

Subpart 109–60.1—Contractor's Responsibility

109–60.100 General.
109–60.101 Assumption of responsibility.
109–60.102 Contractor's liability.
109–60.103 Segregation of Government property.
109–60.104 Physical protection of property.
109–60.105 Control of sensitive items of property.
109–60.106 Disposition.
109–60.107 Relief from responsibility.

Subpart 109–60.2—Records and Financial Reports

109–60.200 General.
109–60.201 Unit cost.
109–60.202 Records of plant and capital equipment.
109–60.203 Records of material maintained in stores.
109–60.204 Records of material issued upon receipt.
109–60.205 Financial property control reports.
109–60.206 DOE plant and equipment asset types.

Subpart 109–60.3—Identification

109.60.300 General.

Subpart 109–60.4—Physical Inventories

109–60.400 General.
109–60.401 Frequency.
109–60.402 Reporting results of inventories.
109–60.403 Records of inventories.
109–60.404 Inventories upon termination or completion.

Subpart 109–60.5—Care and Maintenance

109–60.500 General.
109–60.501 Contractor's maintenance program.

Subpart 109–60.6—Utilization, Disposal, and Retirement

109–60.600 General.
109–60.601 Maximum use of property.
109–60.602 Disposal.
109–60.603 Retirement of property.

Subpart 109–60.7—Motor Vehicle and Aircraft Management

109–60.700 Scope of subpart.
109–60.701 Definition.
109–60.702 Policy.
109–60.703 Classification of motor vehicles.
109–60.704 Acquisition of motor vehicles.
109–60.705 Identification of motor vehicles.
109–60.706 Use of the GSA Interagency Motor Pool System.
109–60.707 Official use of motor vehicles.
109–60.708 Maintenance.
109–60.709 Disposition of motor vehicles.
109–60.710 Required motor vehicle reports.
109–60.711 Aircraft.

Subpart 109–60.8—109–60.46 [Reserved]

Subpart 109–60.47—Reports

109–60.4700 Required reports.

AUTHORITY: Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

SOURCE: 49 FR 25601, June 21, 1984, unless otherwise noted.

§ 109–60.000 Scope and applicability of part.

This part sets forth the minimum requirements to be observed by off-site contractors in establishing and maintaining control over Government property provided pursuant to a contract with DOE. This part does not apply to transportation contracts, grants, cooperative agreements, contracts with state and local governments, and to operating and on-site service contractors. To the extent of any inconsistency between this part and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

§ 109–60.001 Definitions.

As used in this part the following definitions apply:

(a) *Accessory item* means an item that facilitates or enhances the operation of capitalized equipment but which is not essential for its operation, such as remote control devices.

(b) *Auxiliary item* means an item without which the basic unit of equipment cannot operate, such as motors for pump and machine tools.

(c) *Capital equipment* means personal property items having a unit acquisition cost of generally $1,000.00 or more and an anticipated service life in excess of one (1) year, regardless of type of funding, are not properly chargeable to buildings or utilities, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use.

(d) *Government personal property* means all property provided at Goverment expense for performance of the contract, regardless of the method by which it is provided, including rented or leased equipment, except real property, records of the Federal Government, nuclear and special source materials, and atomic weapons and byproduct materials.

(1) *Government-furnished property* means property in the possession of or directly acquired by the Government and subsequently made available to the contractor for use in performance of the contract.

(2) *Contractor-acquired Government property* means property acquired or otherwise provided by the contractor for performance of a contract and to which the Government has title or the right to take title under the contract terms.

(e) *Materials* means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in normal use in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, or supplies.

(f) *Property administrator* means an authorized representative of the contracting officer assigned to administer the contract requirements and obligations relative to Government property. If an authorized representative has not been designated as the property administrator, the contracting officer is the property administrator.

(g) *Plant and equipment* means land, land rights, depletable resources, improvements to land, buildings and structures, utilities, and capital equipment having an anticipated service life of 1 year or more, the individual units of which satisfy the monetary and other criteria for capital charges and which therefore justify the maintenance of continuing plant and equipment records.

(h) *Salvage* means that property which has some value in excess of its basic material content but which is in such condition that it has no reasonable prospect of use for any purpose as a unit and its repair or rehabilitation for use is clearly impracticable.

(i) *Scrap* means property that has no value except for the recoverable value of its basic material content.

(j) *Sensitive items* means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

(k) *Special test equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of a contract. It consists of items or assemblies of equipment that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for the installation of special test equipment), and equipment items used for general testing purposes.

(l) *Special tooling* means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or the performance of particular services. It does not include material, special test

equipment, facilities (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

Subpart 109–60.1—Contractor's Responsibility

§ 109–60.100 General.

(a) The contractor is directly responsible and accountable for all Government property in its possession or control in accordance with the provisions of the contract, including property provided under such contract which may be in the possession or control of a subcontractor. The contractor shall establish and maintain a system, in accordance with the provisions of this part, to control, protect, preserve and maintain all Government property. If the contractor is expected to acquire and be accountable for, or does acquire Government personal property with an acquisition value of $500,000 or more, the contractor's property management system shall be in writing. Contractors holding Government personal property with an acquisition value of less than $500,000 may, at the discretion of the contracting officer, be required to have their property management system in writing. The requirement for written systems may be waived in writing by the contracting officer where the contracting officer determines that maintenance of a written system is unnecessary. The system shall be reviewed and if satisfactory, approved in writing by the contracting officer.

(b) The contractor shall maintain and make available such records as are required by subpart 109–60.2 and shall account for all Government property until relieved of that responsibility. Liability for loss, damage, or improper use of property in a given instance will depend upon all the circumstances surrounding the particular case and will be determined in accordance with the provisions of the contract. The contractor shall furnish all data necessary to substantiate any request for discharge from responsibility.

(c) The contractor shall require subcontractors provided Government property under the prime contract to comply with the provisions of this part. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system.

(d) If any portion of the contractor's property control system is found to be inadequate upon review by the property administrator, necessary corrective action will be accomplished by the contractor prior to approval of the system. When agreement as to adequacy of control or corrective action cannot be reached between the contractor and the property administrator, the matter will be referred to the contracting officer.

(e) The property records and the premises where any Government property is located shall be accessible to the property administrator or other authorized representative during contract performance, at contract completion or termination, or at all reasonable times. The contractor's property control system is subject to audit by the Government as often as circumstances warrant during the contract's performance, at its completion or termination, or at any time thereafter while the contractor is required to retain the contract records. All these records, including related correspondence, shall be made available to the auditors.

§ 109–60.101 Assumption of responsibility.

(a) The contractor becomes responsible for Government-furnished property upon its delivery into the contractor's custody or control. For contractor-acquired Government property, the contractor assumes responsibility in accordance with the property provisions of the contract.

(b) All Government-furnished property shall be inspected and checked promptly at the time of receipt. Any visible or other external evidence of damage or error in quantity should be noted on the waybill with the signature of the carrier's agent. As soon as possible, the contractor shall send the contracting officer a full report of the damage or quantity error, including extent, apparent cause, and the estimated cost of repairs. The contracting officer will advise the contractor of the action to be taken.

(c) It is the contractor's responsibility to inspect, at the time of receipt, all property not furnished by the government that is acquired in the performance of the contract, and to take any necessary action with the vendor and/or carrier if there should be any damage or error in quantity.

(d) Procedures shall be established to protect any warranty rights which accrue to the Government with the acquisition of Government property.

§109–60.102 Contractor's liability.

(a) Subject to the terms of the contract, the contractor may be liable for shortage, loss, damage, or destruction of Government property or when there is evidence of improper or unreasonable use or consumption of Government property.

(b) The contractor shall report promptly to the property administrator any shortage, loss, damage, or destruction of Government property in its possession or control, or in the possession or control of any subcontractor, together with all the facts and circumstances of the case.

(c) Any loss that may be due to theft shall be reported by the contractor immediately to the local police and/or Federal Bureau of Investigation and the property administrator.

§109–60.103 Segregation of Government property.

Ordinarily, provisions shall be made by the contractor to keep Government property segregated from contractor-owned property. Commingling of Government and contractor-owned property may be allowed only when the segregation of the property would materially hinder the progress of the work, (e.g., segregation is not feasible for reasons such as quantities, lack of space, or costs caused by additional handling), and where control procedures are adequate, i.e., the Government property is identified as being Government property. Commingling must be approved in advance by the property administrator, In case of research and development contracts with educational institutions, commingling is authorized without the requirement for advance approval unless physical segregation is otherwise required by the contracting officer.

§109–60.104 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property, to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

§109–60.105 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment of inventory levels due to losses, thefts and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

§109–60.106 Disposition.

The contractor is responsible for disposing of Government property as provided for in the contract or as directed by the contracting officer. The contractor shall promptly advise the property administrator of any Government property that becomes excess to requirements for contract performance

and to take such action for its disposition as directed.

§ 109–60.107 Relief from responsibility.

Subject to instructions of the contracting officer and the terms of the contract, the contractor may be relieved of responsibility for Government property when the property is—

(a) Consumed or expended in contract performance—to the extent the contracting officer has determined that its consumption or expenditure was for proper purposes and in reasonable quantity for performance of the contract;

(b) Removed from contractor's possession—when removed as directed by the property administrator or contracting officer;

(c) Lost, damaged or destroyed (including property consumed or expended in excess of reasonable requirements, and non-severable Government-owned property which has been connected to contractor-owned property for the performance of the contract and cannot be removed without destroying its serviceability)—when the contracting officer has determined the contractor's liability, if any; the Government has been reimbursed to the extent required by the contracting officer's determination; and, property disposition has been made of any property rendered unserviceable by damage; or

(d) Retained by the contractor, with approval of the contracting officer, and for which the Government has received adequate consideration.

Subpart 109–60.2—Records and Financial Reports

§ 109–60.200 General.

(a) The contractor shall establish and maintain adequate property control records, either manual or mechanized and consistent with the requirements of this subpart, for all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor. Unless otherwise directed by the contracting officer, records of Government property established and maintained by the contractor under the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government.

(b) If a contractor has multiple contracts with DOE, separate property records for each contract should be maintained. However, if approved by the contracting officer, a consolidated property record may be maintained if it provides the pertinent information set forth in this subpart and the property is identified to the applicable contract.

(c) Property records of the type established for components acquired separately shall be used for serviceable components removed from items of Government property as a result of modification.

(d) The contractor's property control system shall contain a system or technique to locate any item of Government property with reasonable promptness.

§ 109–60.201 Unit cost.

(a) The unit cost of each item of Government property shall consist of the acquisition cost and the cost of any additional components, and shall be contained in the contractor's property control system. Unless the contractor's quantitative inventory record contains unit cost, the supplementary records containing this information must be identified and recognized as a part of the official property records. For Government-furnished property, copies of documents needed for record purposes, including pricing, will be furnished to the contractor.

(b) For property record purposes, original transportation and installation costs are to be considered as part of the acquisition cost of an item. Subsequent costs incurred in transporting and/or installing transferred or relocated property should not be added to the original acquisition cost.

§ 109–60.202 Records of plant and capital equipment.

(a) For each item of plant and capital equipment (as defined in § 109–60.001), the contractor shall maintain an individual item record containing, at a minimum the—

(1) Contract number;

(2) Asset type (Ref. § 109–60.206);

(3) Nomenclature or description of item;

(4) U.S. Government identification tag number;

(5) Manufacturer's name;

(6) Manufacturer's model number;

(7) Serial number;

(8) Acquisition document reference and date;

(9) Location; and

(10) Unit cost (including transportation and installation).

(b) Accessory and auxiliary items that are attached to, part of, or acquired for use with a specific item of capital equipment shall be recorded on the record of the associated item of capital equipment. Useable accessory and auxiliary items that are removed from items of Government equipment shall also be separately recorded, and the cost of the basic item reduced proportionally.

§109–60.203 Records of material maintained in stores.

Records of Government-owned material maintained by the contractor in stores, and held under inventory control, shall contain the—

(a) Contract number;

(b) Nomenclature or description of item;

(c) Quantity received;

(d) Quantity issued;

(e) Balance on hand;

(f) Posting reference and date of transaction;

(g) Unit price;

(h) Location; and

(i) Disposition.

§109–60.204 Records of material issued upon receipt.

(a) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided materials that is issued for immediate consumption and not entered in the inventory records as a matter of sound business practice.

(b) With respect to non-profit organizations, where material is issued directly upon receipt, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so to be considered consumed under the contract.

§109–60.205 Financial property control reports.

The contractor shall prepare a semiannual report, as of March 31 and September 30 of each year, for each contract and subcontract thereunder showing the dollar amount and the number of line items of plant and capital equipment, by DOE asset type (see §109–60.206), acquired or disposed or during the period. The report will show, at a minimum, the beginning balance, acquisition, disposition, and ending balance. The report format and the DOE office to which the report will be furnished will be as directed by the property administrator. The reports are due not later than 45 days after the end of the reporting period.

§109–60.206 DOE plant and equipment asset types.

401 Land
410 Land Rights
430 Minerals
440 Timber
460 Site Preparation, Grading and Landscaping
470 Roads, Walks, and Paved Areas
480 Fences and Guard Towers
490 Other Improvements to Land
501 Buildings
550 Other Structures
610 Communications Systems
615 Electric Generation, Transmission and Distribution Systems
620 Fire Alarm Systems
625 Gas Production, Transmission and Distribution Systems
630 Irrigation Systems
635 Railroad Systems
640 Sewerage Systems
645 Steam Generation and Distribution Systems
650 Water Supply, Pumping, Treatment and Distribution Systems
655 Nuclear Steam and Electric Generation and Transmission Systems
660 SPR Crude Oil Piping System
665 NPR Crude Oil Extraction and Distribution System
710 Heavy Mobile Equipment
715 Hospital and Medical Equipment
720 Laboratory Equipment
725 Motor Vehicles and Aircraft
730 Office Furniture and Equipment
735 Process Equipment
740 Railroad Rolling Stock

745 Reactors and Accelerators
750 Security and Protection Equipment
755 Shop Equipment
760 Reserve Construction Equipment Pool
770 Automatic Data Processing Equipment
799 Miscellaneous Equipment
800 Improvements to Property of Others
900 Unclassified Plant and Equipment

Subpart 109–60.3—Identification

§ 109–60.300 General.

(a) The contractor shall identify, mark, and record all capital and sensitive items of equipment promptly upon receipt, except leased or rented equipment, and shall maintain this identification as long as such property remains in the custody, possession, or control of the contractor. Property identification numbers will be recorded on all applicable receiving, shipping, and disposal documents, and any other documents pertaining to the property control system where practicable. Marking and numbering shall be accomplished by etching, stamping, painting, attaching metal or plastic tags or decalcomanias. Each item shall be marked ''Property of the U.S. Government, Department of Energy.'' Information on property numbers will be furnished by the property administrator. If practicable, such markings shall be removed or obliterated from the property involved, if and when Government ownership is relinquished. Leased or rented equipment shall be identified in such manner as will not damage the property. Property which by its nature or size cannot be marked shall not be commingled with contractor-owned property unless approved by the property administrator. When items are not susceptible to marking, they shall be subject to other specific control measures, such as custodial receipts.

(b) Where special tooling or special test equipment is utilized under a contract or subcontract, it shall be identified as required by the contracting officer.

Subpart 109–60.4—Physical Inventories

§ 109–60.400 General.

The contractor shall periodically physically inventory Government property in its possession or control and shall require such inventories of property held by subcontractors. The physical inventory shall be consistent with approved contractor procedures and generally accepted accounting principles. Procedures that are limited solely to a check-off of a listing of recorded property do not meet the requirements of a physical inventory. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

§ 109–60.401 Frequency.

Physical inventories of permanently affixed plant (such as fencing, buildings, other structures, utilities and systems) are to be taken not less frequently than every 10 years. Inventories of movable capital equipment are to be taken not less frequently than every 2 years. Inventories of sensitive items (capital and non-capital) shall be taken not less frequently than annually. Substantial quantities of materials (stores) held under inventory control shall be inventoried annually. Small quantities of material representing bench stock need not be inventoried.

§ 109–60.402 Reporting results of inventories.

The contractor shall, at a minimum, submit to the property administrator a listing of all discrepancies disclosed by a physical inventory, and a signed statement that the physical inventory was completed on a certain date and that the official property records were found to be in agreement with the physical inventory, except for the discrepancies reported. As a minimum, the discrepancy listing shall contain the property number, nomenclature,

and unit cost. The listing and signed statement shall be furnished with a minimum of delay after completion of the physical inventory, but no later than 60 days after its completion.

§109–60.403 Records of inventories.

Appropriate inventory records and reports shall be maintained and will serve as a basis for (a) effecting maximum utilization of available property, (b) prompt identification and reporting of excess property, (c) effective physical protection of property, and (d) the preparation of special and recurring reports. Full use will be made of accounting records and reports to avoid duplication.

§109–60.404 Inventories upon termination or completion.

(a) Immediately upon termination or completion of a contract, the contractor shall submit an inventory report adequate for determining appropriate disposal of all Government property applicable to the terminated or completed contract. Further, this report shall include an inventory report of all Government property in a subcontractor's possession or control which is also applicable to the terminated or completed contract. This inventory report will be submitted to the property administrator for verification and disposition action.

(b) Exception. The requirement for physical inventory of Government property at the completion of a contract may be waived by the contracting officer when the property is authorized for use on a follow-on contract, provided that—

(1) Past experience has established the adequacy of property controls; and

(2) A statement is provided by the contractor indicating that transfer of record balances has been made in lieu of preparing a formal inventory list and the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

Subpart 109–60.5—Care and Maintenance

§109–60.500 General.

The contractor shall be responsible for the proper care and maintenance of Government property in its possession or control from the time of receipt until properly relieved of responsibility. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

§109–60.501 Contractor's maintenance program.

The contractor's maintenance program shall be consistent with sound economic industrial practice, the manufacturer's recommendation, and the terms of the contract, and shall include the following:

(a) *Preventive maintenance.* Preventive maintenance is generally performed on a regularly scheduled basis in order to detect and correct unfavorable conditions or defects before they result in breakdowns and to maximize the useful life of the equipment. An effective preventive maintenance program shall consist of, but not be limited to—

(1) Inspection of equipment at periodic intervals to detect maladjustment, wear, or impending breakdown;

(2) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(3) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(4) Removal of sludge, chips, and cutting oils from equipment which will not be used for a period of time;

(5) Taking necessary precautions to prevent deterioration from contamination and corrosion; and

(6) Proper storage and preservation of accessories and special tools furnished with an item of equipment but not regularly used with it.

(b) *Major repairs or rehabilitation.* The maintenance program of the contractor shall provide for the disclosure and reporting to the property administrator

of the need for major repairs, replacement, and other rehabilitation work on Government property in its possession or control.

(c) *Records of maintenance.* The contractor shall keep records sufficient to disclose the maintenance and repair performed and associated cost.

Subpart 109–60.6—Utilization, Disposal, and Retirement

§ 109–60.600 General.

It is DOE's policy that all property furnished under a contract shall be utilized to the fullest extent possible. The contractor's procedures shall be adequate to assure that Government property will be utilized only for those purposes authorized in the contract, and that the contracting officer's approval is obtained prior to noncontract use.

§ 109–60.601 Maximum use of property.

Property and supply management practices shall assure that the maximum and best possible use is made of property. Materials and equipment shall be limited to those items essential for effective execution of work performed under the contract.

§ 109–60.602 Disposal.

Unless otherwise authorized, contractors having property determined to be excess shall contact the property administrator for instruction as to the proper method of disposal. Property shall not be disposed of without prior approval of the contracting officer.

§ 109–60.603 Retirement of property.

When capital equipment 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 made, supported by an investigation, if necessary, as to the date and circumstances surrounding loss, theft, destruction, or damage. The retirement work order shall be signed by the responsible contractor administrative official initiating the report and reviewed and approved by an official at least one supervisory echelon above the official initiating the report, and the property administrator. Detailed information concerning the retention and/or submission of retirement work orders will be furnished by the property administrator.

Subpart 109–60.7—Motor Vehicle and Aircraft Management

§ 109–60.700 Scope of subpart.

This subpart prescribes basic policies and procedures for the management of Government-owned motor vehicles and aircraft in the possession of off-site contractors.

§ 109–60.701 Definition.

Government-furnished motor vehicles are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA–IMPS), and vehicles leased from commercial sources.

§ 109–60.702 Policy.

(a) Government-furnished motor vehicles and aircraft shall be provided to or acquired by off-site contractors when considered essential for the performance of the contract work and when approved by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety considerations, fuel economy, and applicable laws and regulations.

(c) DOE–PMR Parts 109–38 and 109–39 (41 CFR chapter 109) contain the requirements for management of DOE-owned motor vehicles and aircraft. DOE contracting officers shall apply the applicable provisions contained therein in their management of contractor motor vehicle and aircraft operations.

(d) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

(e) Contractors shall maintain and operate motor vehicles in such a manner as to foster reduced fuel consumption.

(f) Normally, motor vehicles will not be furnished to fixed-price contractors.

(g) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IMPS; and

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA–IMPS.

§109–60.703 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) *Passenger vehicles.* (1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) *Trucks.* (1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2.

(ii) 4 x 4.

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2.

(ii) 4 x 4.

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) *Special purpose vehicles.* (1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

§109–60.704 Acquisition of motor vehicles.

(a) GSA has the responsibility for procurement of motor vehicles for Government agencies.

(b) Contractors shall submit motor vehicle requirements to the contracting officer for approval.

(c) The acquisition of passenger vehicles is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards.

(d) The DOE Procurement and Assistance Management Directorate, Headquarters, (MA–422), shall certify all requisitions for the following:

(1) The acquisition of small, subcompact, and compact passenger vehicles.

(2) The lease (60 continuous days or more) of light trucks less than 8,500 GVWR.

(e) Purchase requisitions for acquisition of passenger vehicles by purchase or lease must be processed in accordance with 41 CFR 109–38.1306.

(f) Purchase requisitions for other motor vehicles may be submitted to GSA as directed by the contracting officer.

(g) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

§109–60.705 Identification of motor vehicles.

(a) Except as indicated in §109–60.705(b), DOE-owned motor vehicles will have Government license tags and the following identification, which will be furnished and displayed as specified by the property administrator:

For Official Use Only
U.S. Government
Department of Energy

(b) Security vehicles may be exempted from the above requirements by the contracting officer. All other exemptions require approval by the DOE Director of Procurement and Assistance Management Directorate.

§109–60.706 Use of the GSA Interagency Motor Pool System.

Where authorized by the contracting officer, contractors may use the services of the GSA–IMPS.

§109–60.707 Official use of motor vehicles.

Government-owned vehicles are to be used for ''Official Use Only.'' Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis requires approval of the head of the cognizant DOE field office. Records of such approval will be kept on file.

§109–60.708 Maintenance.

Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty. The GSA publication ''Guide for the Preventive Maintenance of Motor

Vehicles'' provides guidance for the maintenance of Government-owned vehicles.

§ 109–60.709 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms.

§ 109–60.710 Required motor vehicle reports.

Contractors shall submit the following annual fiscal year-end reports of Government-furnished motor vehicles to the contracting officer. Information on preparation and submission of the reports will be furnished by the property administrator.

(a) Agency Report of Motor Vehicle Data (Standard Form 82).

(b) Special Purpose Vehicle Report.

(c) Age and Mileage Analysis.

§ 109–60.711 Aircraft.

(a) Acquisition of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the DOE Director of Procurement and Assistance Management.

(b) Aircraft shall be used for official purposes only.

Subpart 109–60.8—109–60.46 [Reserved]

Subpart 109–60.47—Reports

§ 109–60.4700 Required reports.

Following is a summary listing of those property reports required to be submitted by the contractor, along with the frequency of the reports and the subpart which describes the report:

(a) Loss, damage, or destruction of Government property (On occurrence) § 109–60.102(b).

(b) Loss due to theft (On occurrence) § 109–60.102(c).

(c) Financial property control reports (Semi-annual) § 109–60.205.

(d) Physical inventories of permanently affixed plant (Not less frequently than every 10 years) § 109–60.402.

(e) Physical inventories of capital equipment (Not less frequently than biennial) § 109–60.402.

(f) Physical inventories of sensitive items (Not less frequently than annual) § 109–60.402.

(g) Termination inventories (Termination or completion) § 109–60.404.

(h) Motor vehicle reports (Annual) § 109–60.710.

CHAPTER 114—DEPARTMENT OF THE INTERIOR

Part		*Page*
114–51	Government furnished quarters	272

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]

CHAPTER 115—ENVIRONMENTAL PROTECTION AGENCY

Part		*Page*
115–1	Introduction	274

PART 115–1—INTRODUCTION

Subpart 115–1.1—Regulation System

Sec.
115–1.100 Scope of subpart.
115–1.103 Temporary-type FPMR.
115–1.103–50 Temporary-type changes to EPPMR.
115–1.104 Publication of FPMR.
115–1.104–50 Publication of EPPMR.
115–1.106 Applicability of FPMR.
115–1.108 Agency implementation and supplementation of FPMR.
115–1.109 Numbering in FPMR system.
115–1.110 Deviations.

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.

CHAPTER 128—DEPARTMENT OF JUSTICE

Part		*Page*
128–1	Introduction	276
128–18	Acquisition of real property	283
128–48	Utilization, donation, or disposal of abandoned and forfeited personal property	284
128–50	Seized personal property	286

PART 128–1—INTRODUCTION

Subpart 128–1.1—Regulation System

Sec.
128–1.100 Scope of subpart.
128–1.101 Justice Property Management Regulations.
128–1.105 Authority for JPMR.
128–1.152 Citation.

Subpart 128–1.50—Authorities and Responsibilities for Personal Property Management

128–1.5001 Scope of subpart.
128–1.5002 Definitions.
128–1.5002–1 Acquire.
128–1.5002–2 Department.
128–1.5002–3 Head of the Agency/Department.
128–1.5002–4 Bureau.
128–1.5002–5 Personal property.
128–1.5002–6 Personal property management.
128–1.5002–7 Property management officer (PMO).
128–1.5002–8 Property custodian (PC).
128–1.5002–9 Supply support system.
128–1.5003 Primary authority and responsibility.
128–1.5004 Basis for delegations of authority and assignment of responsibilities.
128–1.5005 Delegations of authority.
128–1.5005–1 Primary delegations.
128–1.5005–2 Redelegations of authority.
128–1.5006 General responsibilities.
128–1.5006–1 Head of bureau.
128–1.5006–2 Property management officer (PMO).
128–1.5006–3 Department employees.
128–1.5007 Reproduction of departmental and bureau seals.

Subpart 128–1.80—Seismic Safety Program

128–1.8000 Scope.
128–1.8001 Background.
128–1.8002 Definitions of terms.
128–1.8003 Objective.
128–1.8004 Seismic Safety Coordinators.
128–1.8005 Seismic safety standards.
128–1.8006 Seismic Safety Program requirements.
128–1.8007 Reporting.
128–1.8008 Exemptions.
128–1.8009 Review of Seismic Safety Program.
128–1.8010 Judicial review.

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

Sec.

128–48.001 Definitions.
128–48.001–5 Forfeited property.
128–48.001–50 Administrative or summary process.

Subpart 128–48.1—Utilization of Abandoned and Forfeited Personal Property

128–48.102–1 Vesting of title in the United States.
128–48.102–4 Proceeds.
128–48.150 Determination of type of property.

Subpart 128–48.3—Disposal of Abandoned and Forfeited Personal Property

128–48.305–1 Abandoned or other unclaimed property.

Subpart 128–48.50—Proper Claims for Abandoned or Other Unclaimed Personal Property

128–48.500 Scope of subpart.
128–48.501 Definitions.
128–48.501–1 Determining official.
128–48.501–2 Claimant.
128–48.501–3 Owner.
128–48.501–4 Person.
128–48.502 Procedures relating to claims.
128–48.503 General procedures.

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.

Subtitle D—Other Provisions Relating to Property Management

[Reserved]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Table
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of June 20, 1997)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I General Accounting Office (Parts 1—99)
II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
IV Advisory Committee on Federal Pay (Parts 1400—1499)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Part 2100)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Part 3201)
XXIII Department of Energy (Part 3301)

Title 5—Administrative Personnel—Continued

Chap.	
XXIV	Federal Energy Regulatory Commission (Part 3401)
XXVI	Department of Defense (Part 3601)
XXVIII	Department of Justice (Part 3801)
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Part 4301)
XXXV	Office of Personnel Management (Part 4501)
XL	Interstate Commerce Commission (Part 5001)
XLI	Commodity Futures Trading Commission (Part 5101)
XLII	Department of Labor (Part 5201)
XLIII	National Science Foundation (Part 5301)
XLV	Department of Health and Human Services (Part 5501)
XLVI	Postal Rate Commission (Part 5601)
XLVII	Federal Trade Commission (Part 5701)
XLVIII	Nuclear Regulatory Commission (Part 5801)
L	Department of Transportation (Part 6001)
LII	Export-Import Bank of the United States (Part 6201)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Part 6401)
LVII	General Services Administration (Part 6701)
LVIII	Board of Governors of the Federal Reserve System (Part 6801)
LIX	National Aeronautics and Space Administration (Part 6901)
LX	United States Postal Service (Part 7001)
LXI	National Labor Relations Board (Part 7101)
LXII	Equal Employment Opportunity Commission (Part 7201)
LXIII	Inter-American Foundation (Part 7301)
LXV	Department of Housing and Urban Development (Part 7501)
LXVI	National Archives and Records Administration (Part 7601)
LXIX	Tennessee Valley Authority (Part 7901)
LXXI	Consumer Product Safety Commission (Part 8101)
LXXIV	Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI	Federal Retirement Thrift Investment Board (Part 8601)
LXXVII	Office of Management and Budget (Part 8701)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Consumer Service, Department of Agriculture (Parts 210—299)

Title 7—Agriculture—Continued

Chap.	
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)
VII	Farm Service Agency, Department of Agriculture (Parts 700—799)
VIII	Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIII	Northeast Dairy Compact Commission (Parts 1300—1399)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
XVIII	Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX	Office of Finance and Management, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	[Reserved]
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)

Title 7—Agriculture—Continued

Chap.

XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)

XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)

XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)

XLI [Reserved]

XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)

II Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

III Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XI United States Enrichment Corporation (Parts 1100—1199)

XV Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

Title 12—Banks and Banking—Continued

Chap.

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

IX Federal Housing Finance Board (Parts 900—999)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

XV Thrift Depositor Protection Oversight Board (Parts 1500—1599)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700-1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Export Administration, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

Title 15—Commerce and Foreign Trade—Continued

Chap.

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

Title 20—Employees' Benefits—Continued

Chap.

VI Employment Standards Administration, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development, International Development Cooperation Agency (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V United States Information Agency (Parts 500—599)

VI United States Arms Control and Disarmament Agency (Parts 600—699)

VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)

IX Foreign Service Grievance Board Regulations (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Board for International Broadcasting (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

Title 23—Highways—Continued

Chap.

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

Title 25—Indians—Continued

Chap.

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Part 1001)

VII Office of the Special Trustee for American Indians, Department of the Interior (Part 1200)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100—199)

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)

XII Federal Mediation and Conciliation Service (Parts 1400—1499)

XIV Equal Employment Opportunity Commission (Parts 1600—1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

Title 29—Labor—Continued

Chap.

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Minerals Management Service, Department of the Interior (Parts 200—299)

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)

IV Geological Survey, Department of the Interior (Parts 400—499)

VI Bureau of Mines, Department of the Interior (Parts 600—699)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

Title 32—National Defense—Continued

Chap.

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

XXIX Presidential Commission on the Assignment of Women in the Armed Forces (Part 2900)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)

SUBTITLE B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

XI National Institute for Literacy (Parts 1100-1199)

SUBTITLE C—Regulations Relating to Education

XII National Council on Disability (Parts 1200—1299)

Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VII Library of Congress (Parts 700—799)

Title 36—Parks, Forests, and Public Property—Continued

Chap.

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900—999)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

XIV Assassination Records Review Board (Parts 1400-1499)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)

II Copyright Office, Library of Congress (Parts 200—299)

IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)

V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)

V Council on Environmental Quality (Parts 1500—1599)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61–1—61–999)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101–1—101–99)

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

Title 41—Public Contracts and Property Management—Continued

Chap.

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

SUBTITLE E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201–1—201–99) [Reserved]

SUBTITLE F—Federal Travel Regulation System

301 Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

304 Payment from a Non-Federal Source for Travel Expenses (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

Title 45—Public Welfare—Continued

Chap.

IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII ACTION (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI Commission on Fine Arts (Parts 2100—2199)

XXII Christopher Columbus Quincentenary Jubilee Commission (Parts 2200—2299)

XXIII Arctic Research Commission (Part 2301)

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)

II Maritime Administration, Department of Transportation (Parts 200—399)

IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)

II Office of Science and Technology Policy and National Security Council (Parts 200—299)

III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)

2 Department of Defense (Parts 200—299)

3 Department of Health and Human Services (Parts 300—399)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

4 Department of Agriculture (Parts 400—499)

5 General Services Administration (Parts 500—599)

6 Department of State (Parts 600—699)

7 Agency for International Development (Parts 700—799)

8 Department of Veterans Affairs (Parts 800—899)

9 Department of Energy (Parts 900—999)

10 Department of the Treasury (Parts 1000—1099)

12 Department of Transportation (Parts 1200—1299)

13 Department of Commerce (Parts 1300—1399)

14 Department of the Interior (Parts 1400—1499)

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 United States Information Agency (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

35 Panama Canal Commission (Parts 3500—3599)

44 Federal Emergency Management Agency (Parts 4400—4499)

51 Department of the Army Acquisition Regulations (Parts 5100—5199)

52 Department of the Navy Acquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)

54 Defense Logistics Agency, Department of Defense (Part 5452)

57 African Development Foundation (Parts 5700—5799)

61 General Services Administration Board of Contract Appeals (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

Chap.

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Highway Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Transportation (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

Alphabetical List of Agencies Appearing in the CFR

(Revised as of June 20, 1997)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Advanced Research Projects Agency	32, I
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Cooperative State Research, Education, and Extension Service	7, XXXIV
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Finance and Management, Office of	7, XXX
Food and Consumer Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
American Indians, Office of the Special Trustee	25, VII

Agency	CFR Title, Subtitle or Chapter
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Armed Forces Retirement Home	5, XI
Arms Control and Disarmament Agency, United States	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Assassination Records Review Board	36, XIV
Benefits Review Board	20, VII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase From People Who Are	41, 51
Board for International Broadcasting	22, XIII
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights, Commission on	45, VII
Civil Rights, Office for	34, I
Coast Guard	33, I; 46, I; 49, IV
Commerce Department	44, IV
Census Bureau	15, I‘
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Export Administration, Bureau of	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Foreign-Trade Zones Board	15, IV
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
National Weather Service	15, IX
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology, Under Secretary for	37, V
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	5, LXXI; 16, II
Cooperative State Research, Education, and Extension Service	7, XXXIV
Copyright Office	37, II
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Contract Audit Agency	32, I
Defense Department	5, XXVI; 32, Subtitle A
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51

Agency	CFR Title, Subtitle or Chapter
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, I, XII; 48, 54
Defense Mapping Agency	32, I
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Mapping Agency	32, I
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Enrichment Corporation, United States	10, XI
Environmental Protection Agency	5, LIV; 40, I
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Environmental Quality, Council on	40, V
Management and Budget, Office of	25, III, LXXVII; 48, 99
National Drug Control Policy, Office of	21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export Administration, Bureau of	15, VII
Export-Import Bank of the United States	5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I

Agency	CFR Title, Subtitle or Chapter
Commercial Space Transportation	14, III
Federal Claims Collection Standards	4, II
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I
Federal Acquisition Regulation	48, 44
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Board	12, IX
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Office of	7, XXX
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Food and Drug Administration	21, I
Food and Consumer Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II
General Services Administration	5, LVII
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Relocation Allowances	41, 302

Agency	CFR Title, Subtitle or Chapter
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	5, XLV; 45, Subtitle A
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services, Office of	45, XIII
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services, Office of	45, XIII
Immigration and Naturalization Service	8, I
Independent Counsel, Office of	28, VII
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Information Agency, United States	22, V
Federal Acquisition Regulation	48, 19
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
American Indians, Office of the Special Trustee	25, VII
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI
National Indian Gaming Commission	25, III

Agency	CFR Title, Subtitle or Chapter
National Park Service	36, I
Reclamation, Bureau of	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Development, Agency for	22, II; 48, 7
Overseas Private Investment Corporation	5, XXXIII; 22, VII
International Fishing and Related Activities	50, III
International Investment, Office of	31, VIII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	5, XXVIII; 28, I
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Property Management Regulations	41, 128
Labor Department	5, XLII
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Standards, Office of	29, II, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Standards, Office of	29, II, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III, LXXVII; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV

Agency	CFR Title, Subtitle or Chapter
Monetary Offices	31, I
National Aeronautics and Space Administration	5, LIX; 14, V
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National and Community Service, Corporation for	45, XXV
National Council on Disability	34, XII
National Credit Union Administration	12, VII
National Drug Control Policy, Office of	21, III
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Indian Gaming Commission	25, III
National Institute for Literacy	34, XI
National Institute of Standards and Technology	15, II
National Labor Relations Board	5, LXI; 29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	5, XLIII; 45, VI
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
National Weather Service	15, IX
Natural Resources Conservation Service	7, VI
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Northeast Dairy Compact Commission	7, XIII
Nuclear Regulatory Commission	5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Offices of Independent Counsel	28, VI
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration	29, XXV
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 45, VIII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV

Agency	CFR Title, Subtitle or Chapter
Presidential Commission on the Assignment of Women in the Armed Forces	32, XXIX
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Technology, Under Secretary for	37, V
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Depositor Protection Oversight Board	12, XV
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	5, L
Coast Guard	33, I; 46, I; 49, IV
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X
Transportation, Office of	7, XXXIII
Travel Allowances	41, 301
Treasury Department	5, XXI; 17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I

Agency	CFR Title, Subtitle or Chapter
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
International Investment, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI
United States Enrichment Corporation	10, XI
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agricultural Outlook Board	7, XXXVIII

Redesignation Table

At 54 FR 4962, Jan. 31, 1989, regulations appearing in title 41, part 101–50 were redesignated as part 105–68.

For the convenience of the user, the following table shows the relationship of the old CFR section numbers in 41 CFR part 101–50 to the new CFR section numbers in 41 CFR part 105–68.

REDESIGNATION TABLE

Old section	New section
Subpart 101–50.1—General	Subpart 105–68.1—General
101–50.100	105–68.100
101–50.105	105–68.105
101–50.110	105–68.110
101–50.115	105–68.115
Subpart 101–50.2—Effect of Action	Subpart 105–68.2—Effect of Action
101–50.200	105–68.200
101–50.205	105–68.205
101–50.210	105–68.210
101–50.215	105–68.215
101–50.220	105–68.220
101–50.225	105–68.225
Subpart 101–50.3—Debarment	Subpart 105–68.3—Debarment
101–50.300	105–68.300
101–50.305	105–68.305
101–50.310	105–68.310
101–50.315	105–68.315

REDESIGNATION TABLE—CONTINUED

Old section	New section
101–50.320	105–68.320
101–50.325	105–68.325
Subpart 101–50.4—Suspension	Subpart 105–68.4—Suspension
101–50.400	105–68.400
101–50.405	105–68.405
101–50.410	105–68.410
101–50.415	105–68.415
101–50.420	105–68.420
101–50.425	105–68.425
Subpart 101–50.5—Responsibilities of GSA, Agency and Participants	Subpart 105–68.5—Responsibilities of GSA, Agency and Participants
101–50.500	105–68.500
101–50.505	105–68.505
101–50.510	105–68.510
101–50.515	105–68.515
101–50.520	105–68.520
101–50.525	105–68.525

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1986, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972 and 1973–1985,'' published in seven separate volumes.

1986

41 CFR

51 FR Page

Chapter 105

105–51 Added 7017, 7022
105–51.501 Amended 7017
105–51.505 (a) amended 7017
105–51.601 (a) amended 7017
105–53.118 (e) and (f) revised 23229
105–53.120 Revised 23229
105–53.130–6 Removed 23229
105–53.134 Revised 23229
105–53.136 Removed 23229
105–53.139 Revised 23230
105–53.140 Added 23230
105–53.141 Added 23230
105–53.142 Added 23230
105–53.143 Revised 23230
105–53.145 Heading, (a), and (b) revised 23230
105–53.147 (b) revised 23230
105–53.150 Revised 23230
105–53.151 Revised 23231
105–67 Added 13500

Chapter 114

114–38.000 Removed 15328
114–38.001—114–38.001–50 (Subpart 114–38.0) Removed 15328
114–38.100—114–38.102–1 (Subpart 114–38.1) Removed 15328
114–38.301—114–38.305–3 (Subpart 114–38.3) Removed 15328
114–38.402 (Subpart 114–38.4) Removed 15328
114–38.605—114–38.607 (Subpart 114–38.6) Removed 15328

41 CFR—Continued

51 FR Page

Chapter 114 —Continued

114–38.701 (Subpart 114–38.7) Removed 15328
114–38.901—114–38.908 (Subpart 114–38.9) Removed 15328
114–38.1002—114–38.1003 (Subpart 114–38.10) Removed 15328
114–38.1200—114–38.1202 (Subpart 114–38.12) Removed 15328
114–38.5000—114–38.5006 (Subpart 114–38.50) Removed 15328
114–38.5100—114–38.5105 (Subpart 114–38.51) Removed 15328
114–38.5201—114–38.5203 (Subpart 114–38.52) Removed 15328
114–38.5400—114–38.5402 (Subpart 114–38.54) Removed 15328
114–39 Removed 15328
114–50.100—114–50.112 (Subpart 114–50.1) Removed 7019
114–50.200—114–50.201 (Subpart 114–50.2) Removed 7019
114–50.301—114–50.362 (Subpart 114–50.3) Revised 7018, 7022
114–50.307 Amended 7019
114–50.311 (a) and (b) amended 7019
114–50.315 (b) and (e) amended 7019
114–50.321 Amended 7019
114–50.351 Amended 7019
114–50.355 (a) amended 7019
114–50.361 (a) and (b) amended 7019
114–50.362 Introductory text and (d) amended 7019

41 CFR—Continued

51 FR Page

Chapter 114 —Continued

114–50.400—114–50.408 (Subpart 114–50.4) Removed 7019
114–50.500—114–50.502 (Subpart 114–50.5) Removed 7019
114–50.600—114–50.603 (Subpart 114–50.6) Removed 7019
114–50.700—114–50.705 (Subpart 114–50.7) Removed 7019
114–50.800—114–50.804 (Subpart 114–50.8) Removed 7019
114–50.900—114–50.906 (Subpart 114–50.9) Removed 7019
114–50.1000—114–50.1011 (Subpart 114–50.10) Removed..... 7019
114–50.1100—114–50.1101–1 (Subpart 114–50.11) Removed 7019
114–50.1200—114–50.1202 (Subpart 114–50.12) Removed..... 7019
114–50.1300—114–50.1306 (Subpart 114–50.13) Removed..... 7019
114–50 Appendix A amended 7019
Appendix A corrected 23539
114–52 Revised 44471
114–60.000—114–60.003 Removed 26388
114–60.100—114–60.106 (Subpart 114–60.1) Removed..... 26388
114–60.200—114–60.203 (Subpart 114–60.2) Removed..... 26388
114–60.300—114–60.303 (Subpart 114–60.3) Removed..... 26388
114–60.400—114–60.406 (Subpart 114–60.4) Removed..... 26388
114–60.500—114–60.501 (Subpart 114–60.5) Removed..... 26388
114–60.600—114–60.605–1 (Subpart 114–60.6) Removed..... 26388
114–60.700—114–60.705 (Subpart 114–60.7) Removed..... 26388
114–60.800—114–60.804 (Subpart 114–60.8) Removed..... 26388
114–60.900—114–60.905 (Subpart 114–60.9) Removed..... 26388
114–60 Appendixes A and B removed 26388

Chapter 128

128–18 Revised 7019, 7022
128–18.5001–7 Amended..... 7019
128–18.5002–1 (a) and (b) amended..... 7019
128–18.5002–5 (b) and (e) amended..... 7019
128–18.5003–1 Amended..... 7019
128–18.5005–2 (b) amended 7020
128–18.5005–3 (b) amended 7020
128–18.5006–1 Amended 7019, 7020

41 CFR—Continued

51 FR Page

Chapter 128 —Continued

128–18.5006–5 (a) amended 7020
128–18.5007–1 (a) and (b) amended..... 7020
128–18.5007–2 Introductory text and (d) amended 7020
128–18 Appendix A amended 7020

1987

41 CFR

52 FR Page

Chapter 105

105–51 Authority citation revised..... 48023
Revised; eff. 4–2–89 48024
105–51.001 Heading revised; (a) and (b) redesignated as (a) (1) and (2); introductory text designated as new (a) introductory text; new (a) heading and (b) added 48023
105–53.118 (c), (e), (j), and (m) revised..... 23657
105–53.120 Revised..... 23657
105–53.134 Revised..... 23657
105–53.135 Revised..... 23657
105–53.137 Revised..... 23657
105–53.143 (b) revised 23657
105–53.147 (b) revised 23658
105–53.151 Amended..... 23658
105–55.003 (a) revised 46468
105–55.007 (a) and (d) revised 46468
105–70 Added 45188

Chapter 114

114–50 Authority citation revised..... 48024
Revised; eff. 4–2–89 48025
114–50.301 Heading revised; (a) and (b) redesignated as (a) (1) and (2); introductory text designated as new (a) introductory text; new (a) heading and (b) added 48024

Chapter 128

128–18.5001—128–18.5007–2 (Subpart 128–18.50) Authority citation revised 48025
128–18.5001–1 (Subpart 128–18.50) Revised; eff. 4–2–89 48025
128.18–5001–1 Heading revised; (a) and (b) redesignated as (a) (1) and (2); introductory text designated as new (a) introductory text; new (a) heading and (b) added 48025

1988

41 CFR

53 FR Page

Chapter 105

105–53.118 (b), (j), and (m) revised 23761
105–53.120 Revised 23761
105–53.130–2 Revised 23761
105–53.132 (a) and (b) revised 23761
105–53.134 Revised 23761
105–53.135 Revised 23761
105–53.139 (a) revised 23762
105–53.140 Revised 23762
105–53.144 (b) revised 23762
105–53.150 Revised 23762
105–53.151 No. 1 revised 23762
105–54 Revised 40224
105–56 Added 31864
105–60 Revised 1479

Chapter 114

114–51.102 Revised 741
114–51.103 Removed 741
114–51.104—114–51.104–3 Removed 741

1989

41 CFR

54 FR Page

Chapter 105

105–51 Regulation at 52 FR 48023 confirmed; see regulation codified at 49 CFR 24 8912
105–53.112 Revised 26741
105–53.120 Revised 26741
105–53.134 Revised 26741
105–53.135 Removed 26741
105–53.136 Added 26742
105–53.139 (a) revised 26742
105–53.140 Revised 26742
105–53.144 Revised 26742
105–53.150 Revised 26742
105–53.151 Amended 26742
105–68 Redesignated from 101–50 and heading and authority citation revised; interim 4962
Technical correction 6363
Redesignation table corrected 18506
105–68.110 (b) amended; interim 4962
105–68.305 (c) (3) and (4) amended; (c)(5) added; interim 4950, 4962
105–68.315 (b) amended; interim 4962
105–68.320 (a) revised; interim 4950, 4962

41 CFR—Continued

54 FR Page

Chapter 105 —Continued

105–60.600—105–68.630 (Subpart F 105–68.6) Added; interim 4962
105–68 Appendix C added; interim 4951, 4962

Chapter 114

114–50 Regulation at 52 FR 48024 confirmed; see regulation codified at 49 CFR 24 8912

Chapter 128

128–18 Regulation at 52 FR 48025 confirmed; see regulation codified at 49 CFR 24 8912

1990

41 CFR

55 FR Page

Chapter 105

105–1.110 Revised 1673
105–68.110 Regulation at 54 FR 4962 confirmed 21699
105–68.305 Regulation at 54 FR 4950, 4962 confirmed 21699
105–68.315 Regulation at 54 FR 4962 confirmed 21699
105–68.320 Regulation at 54 FR 4950, 4962 confirmed 21699
105–68.600—105.68–635 (Subpart F) Regulation at 54 FR 4950, 4962 revised; eff. in part 7–24–90 ..... 21688, 21701
Subpart Heading corrected 26442
105–68 Appendix C Regulation at 54 FR 4950, 4962 revised 21690, 21701
105–69 Added; interim 6737, 6753

1991

41 CFR

56 FR Page

Chapter 105

105–8 Added 9871
105–68.305 (c)(5) amended 29438
105–68.310 Amended 29438
105–68.320 (a)(1) and (2) amended 29438
105–68.325 (b)(3) amended 29438
105–68.410 (b) amended 29438
105–68.505 (d) amended 29439
105–68.510 (a) and (b)(2) amended 29439
105–68.610 Amended 29438
105–68 Appendix A amended 29439

41 CFR—Continued

56 FR Page

Chapter 132

Chapter 132 Established; interim 13286

132–47 Added; interim 13286

1992

(No regulations published)

1993

41 CFR

58 FR Page

Chapter 105

105-71 Added 43270

Chapter 128

128-1.8000—128-1.8010 (Subpart 128-1.8) Added 42876

1994

41 CFR

59 FR Page

Chapter 105

105-57 Added 1277

105–72 Added 47268

Chapter 128

128-1.8000—128-1.8010 (Subpart 128-1.8) Corrected 33439

1995

41 CFR

60 FR Page

Chapter 105

105–68.100 Revised; eff. 8–25–95 ..... 33040, 33059

105–68.105 Amended; eff. 8–25–95 ..... 33041, 33059

105–68.110 (c) revised; eff. 8–25–95 ..... 33041, 33059

105–68.200 Revised; eff. 8–25–95 ..... 33041, 33059

105–68.215 Revised; eff. 8–25–95 ..... 33041, 33059

105–68.220 Revised; eff. 8–25–95 ..... 33041, 33059

105–68.225 Revised; eff. 8–25–95 ..... 33041, 33059

105–68 Appendixes A and B revised; eff. 8–25–95 ..... 33042, 33059

105–71.136 (d), (g), (h) and (i) revised 19639, 19644

41 CFR—Continued

60 FR Page

Chapter 114

114–1 Removed 39864

114–3 Removed 39864

114–19 Removed 39864

114–25 Removed 39864

114–26 Removed 39864

114–27 Removed 39864

114–28 Removed 39864

114–30 Removed 39864

114–38 Removed 39864

114–40 Removed 39864

114–41 Removed 39864

114–42 Removed 39864

114–43 Removed 39864

114–44 Removed 39864

114–45 Removed 39864

114–46 Removed 39864

114–47 Removed 39864

114–50 Removed 39864

114–51 Heading revised 3555

114–51.100—114–51.102 (Subpart 114–51.1) Heading revised 3555

114–51.100 Revised 3555

114–51.101 Removed 3555

114–51.102 Removed 3555

114–51.100 (Subpart 114–51.1) Appendix I removed 39864

114–51.200—114–51.203 (Subpart 114–51.2) Removed 3555

114–51.300—114–51.303 (Subpart 114–51.3) Removed 3555

114–52 Removed 3555

114–60 Removed 39865

Chapter 132

Chapter 132 Removed; interim 57939

1996

41 CFR

61 FR Page

Chapter 105

105–70.003 (a)(1)(iv) and (b)(1)(ii) amended 67235

105–735 Revised 56403

1997

(No regulations published from January 1, 1997 through July 1, 1997)

○