

goods or services." Similarly, the Internal Revenue Service does not deem nonprofit organizations that provide backend premiums to be involved in sales transactions.

The Postal Service believes it is reasonable to provide similar treatment to backend premiums, particularly where the receipt of the premiums does not appear to be the principal motivation of the donors or members. In these instances, the offer of the premiums will not be considered as "advertisements" for postal purposes; thus the announcements are exempt from the substantially related rules affecting advertisements in nonprofit mail. The Postal Service proposes two tests. First, the requested contribution or other payment must be at least five (5) times the total cost of the premiums to exempt the announcements from being considered as advertisements for the premiums. The cost of each premium is its actual cost to the nonprofit organization. Second, the requested contribution or other payment must be at least three (3) times the represented values in the mailpiece, if any, of the premiums. Both tests must be met or the offer will be considered an advertisement. Nonprofit organizations wishing to mail solicitations for contributions which offer a premium may be asked to substantiate the cost to the nonprofit organization for the premium, consistent with their usual obligation to demonstrate eligibility for nonprofit rates.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

#### List of Subjects in 39 CFR Part 111

Postal Service.

#### PART 111—[AMENDED]

The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual E670.5.0, Eligible And Ineligible Matter, by renumbering subsections 5.9 to 5.10, 5.10 to 5.11, 5.11 to 5.12, and 5.12 to 5.13, and adding a new subsection 5.9 to read as follows:

#### 5.0 ELIGIBLE AND INELIGIBLE MATTER

\* \* \* \* \*

#### 5.9 Contribution and Membership Premiums

Announcements for premiums received as a result of a contribution or payment of membership dues are not considered advertisements if the requested contribution or membership dues is at least 5 times the cost to the nonprofit organization of the premium item(s) offered and at least 3 times the represented value in the mailpiece, if any, of the premium item(s) offered.

\* \* \* \* \*

3. An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

#### R. Andrew German,

Acting Chief Counsel, Legislative.

[FR Doc. 97-23682 Filed 9-5-97; 8:45 am]

BILLING CODE 7710-12-U

#### GENERAL SERVICES ADMINISTRATION

#### 41 CFR Parts 101-1 and 101-46

RIN 3090-AG50

#### Replacement of Personal Property Pursuant to the Exchange/Sale Authority

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends regulations issued by GSA for replacement of personal property pursuant to the exchange/sale authority. The exchange/sale authority permits executive agencies when acquiring replacement personal property, to exchange or sell similar items and apply the exchange allowance or proceeds of sale in whole or in part payment for the replacement property acquired. Changes have been made to incorporate plain English principles, streamline the narrative, define key terms, update organizational references, delete outdated regulatory references, delegate authority to executive agencies to approve deviations under certain conditions, and reduce restrictions and limitations on use of the authority.

**DATES:** Comments must be received on or before October 8, 1997.

**ADDRESSES:** Written comments should be sent to the Personal Property Management Policy Division (MTP), Office of Governmentwide Policy, General Services Administration, 1800 F St., NW., Washington, DC 20405.

#### FOR FURTHER INFORMATION CONTACT:

Martha Caswell, Director, Personal Property Management Policy Division (202-501-3828).

#### SUPPLEMENTARY INFORMATION:

A. The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

#### B. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for public comment. Therefore, the Regulatory Flexibility Act does not apply.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 501 *et seq.* This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a "plain English" style.

*What is the "plain English" style of regulation writing?*

The "plain English" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

*How does the plain English style of regulation writing affect employees?*

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

#### List of Subjects in 41 CFR Parts 101-1 and 101-46:

Exchange/sale of government property, government property management.

Therefore, it is proposed that 41 CFR Ch. 101 be amended set forth below:

#### PART 101-1—INTRODUCTION

1. The authority citation for 41 CFR parts 101-1 and 101-46 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. Section 101-1.110(a) is revised to read as follows:

**§ 101-1.110 Deviations.**

(a) In the interest of establishing and maintaining uniformity to the greatest extent feasible, except as otherwise provided, deviations; i.e., the use of any policy or procedure in any manner that is inconsistent with the 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. Requests for deviations shall clearly state the nature of the deviation and the reasons for such special action.

\* \* \* \* \*

3. Part 101-46 is revised to read as follows:

**PART 101-46—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY**

Sec.

101-46.000 What is the purpose and scope of this part?

101-46.001 What are the definitions of some of the key terms used in this part?

101-46.001-1 Acquire.

101-46.001-2 Combat material.

101-46.001-3 Exchange.

101-46.001-4 Exchange/sale.

101-46.001-5 Executive agency.

101-46.001-6 Federal agency.

101-46.001-7 Historic item.

101-46.001-8 Replacement.

101-46.001-9 Similar.

101-46.002-How do you request deviations and who can approve them?

101-46.002-1 Can you approve requests for deviations from this Part 101-46?

101-46.002-2 Does GSA approve requests for deviations from this Part 101-46?

**Subpart 101-46.1—[Reserved]**

**Subpart 101-46.2—Authorization**

101-46.200 How do you determine whether to do an exchange or sale?

101-46.201 When must you make a reimbursable transfer to another Federal agency when using the exchange/sale authority, to what other organizations may you make a reimbursable transfer, and what are the conditions for a reimbursable transfer?

101-46.202 What are the limitations on the exchange/sale of personal property?

101-46.203 What special authorizations have been made for use of the exchange/sale authority?

**Subpart 101-46.3—Exchange and Sale Procedures**

101-46.300 What are the exchange procedures?

101-46.301 What are the sales procedures?

101-46.302 What are the accounting requirements for the proceeds of sale?

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

**§ 101-46.000 What is the purpose and scope of this part?**

This part prescribes regulations for use by you (an executive agency) when using the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). The regulations apply to all U.S. Government-owned personal property worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101-37 and 101-42 of this chapter, respectively.

**§ 101-46.001 What are the definitions of some of the key terms used in this part?**

**§ 101-46.001-1 Acquire.**

*Acquire* means procure or otherwise obtain personal property, including by lease.

**§ 101-46.001-2 Combat material.**

*Combat material* means arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

**§ 101-46.001-3 Exchange.**

*Exchange* means to replace a non-excess or non-surplus personal property item by trade or trade-in with the supplier of the replacement item when the allowance from the item being replaced is used to reduce or offset the cost of the replacement item. The supplier may be a Government agency, commercial or private organization, or an individual.

**§ 101-46.001-4 Exchange/sale.**

*Exchange/sale* means to exchange or sell a non-excess or non-surplus personal property item and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of a similar item.

**§ 101-46.001-5 Executive agency.**

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

**§ 101-46.001-6 Federal agency**

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

**§ 101-46.001-7 Historic item.**

*Historic item* means property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

**§ 101-46.001-8 Replacement.**

*Replacement* means the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it is used.

**§ 101-46.001-9 Similar.**

*Similar* means that the acquired item and replaced item:

- (a) Are identical; or
- (b) Are designed and constructed for the same specific purpose; or
- (c) Both constitute parts or containers for identical or similar end items; or
- (d) Both fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

**§ 101-46.002 How do you request deviations and who can approve them?**

General provisions for deviations from the Federal Property Management Regulations are found in § 101-1.110 of this chapter. Provisions for deviations from the regulations in this part are presented in this section.

**§ 101-46.002-1 Can you approve requests for deviations from this part 101-46?**

The head of an executive agency may approve deviations within the agency. This authority cannot be redelegated. Only onetime (individual) deviations may be approved by the head of an executive agency. GSA must approve any class deviations. The head of an executive agency may not approve deviations that would permit the exchange/sale of weapons. Also, neither the head of an executive agency nor GSA may approve deviations from regulatory provisions that are mandated by statute e.g., the requirement that the exchange/sale authority be used for replacement property only, and the requirement that property replaced and property acquired are similar. In the interest of maintaining uniformity, deviations shall be kept to a minimum and the head of an executive agency shall prescribe a formal procedure for the control of deviations within the agency and furnish a copy of the procedure to GSA. Also, a copy of each approved deviation shall be furnished to GSA upon its approval.

**§ 101-46.002-2 Does GSA approve requests for deviations from this part 101-46?**

If you choose not to exercise the authority delegated to you by GSA in the preceding section, or if GSA approval of a deviation request is necessary, you may request GSA approval of deviations by submitting a complete written justification to the General Services Administration (GSA), Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), Washington, DC 20405.

**Subpart 101-46.1—[Reserved]****Subpart 101-46.2—Authorization****§ 101-46.200 How do you determine whether to do an exchange or sale?**

(a) When considering use of the exchange/sale authority, you must determine which of the two methods—exchange or sale—will provide the greater return for the Government. When estimating the return under each method, consider all administrative and overhead costs.

(b) If the exchange allowance or estimated sales proceeds for an item of property would be unreasonably low, the property should not be processed under this part. Rather, you should process it according to the regulations in part 101-43 (Utilization of Personal Property) of subpart 101-45.9 (Abandonment or Destruction of Personal Property) of this subchapter as applicable.

**§ 101-46.201 When must you make a reimbursable transfer to another Federal agency when using the exchange/sale authority, to what other organizations may you make a reimbursable transfer, and what are the conditions for a reimbursable transfer?**

(a) If you have property you want to replace which is eligible for exchange/sale, you should, to the maximum extent practicable, first solicit Federal agencies known to use or distribute such property and, if an agency wants it, arrange for a reimbursable transfer. Property that is eligible for replacement under replacement standards prescribed in subpart 101-25.4 of this chapter is not subject to this requirement.

(b) You may make a reimbursable transfer to not only other Federal agencies, but also the Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

(c) When transferring property:

(1) You must do so under terms mutually agreeable to you and the recipient; and

(2) You must not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and

(3) You must apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

**§ 101-46.202 What are the limitations on the exchange/sale of personal property?**

This section describes: Types of property that are ineligible for exchange/sale; conditions that you must meet when conducting an exchange/sale transaction; and actions that are prohibited in an exchange/sale transaction;

(a) What types of property are ineligible for exchange/sale?

(1) You must not use the exchange/sale authority for the following FSC groups of personal property:

- 10 Weapons.
- 11 Nuclear ordnance.
- 12 Fire control equipment.
- 14 Guided missiles.
- 15 Aircraft and airframe structural components, except FSC class 1560 Airframe Structural Components.
- 42 Firefighting, rescue, and safety equipment.
- 44 Nuclear reactors (FSC class 4472 only).
- 51 Hand tools.
- 54 Prefabricated structure and scaffolding.
- 68 Chemicals and chemical products, except medicinal chemicals.
- 71 Furniture.
- 84 Clothing, individual equipment, and insignia.

(2) Also ineligible for exchange/sale are materials in the National Defense Stockpile (50 U.S.C. 98-98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(b) What conditions must be met when conducting an exchange/sale transaction? You may use the exchange/sale authority only if you meet all six of the following conditions:

- (1) The item exchanged or sold is similar to the item acquired; and
- (2) The item exchanged or sold is not excess or surplus, and the item acquired is needed for approved programs; and
- (3) The number of items acquired must equal the number of items replaced unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the old item(s) would otherwise be used; or

(ii) The item(s) sold or exchanged and the item(s) acquired meet the test for similarity specified at § 101-46.001-9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The item exchanged or sold was acquired for official use and not for the principal purpose of exchange or sale; and

(5) You make a written administrative determination at the time of exchange or sale (or at the time of acquisition if it precedes the sale) to apply the exchange allowance or sale proceeds to the acquisition of replacement property; and

(6) You document that the above conditions have been met, a along with all other pertinent documentation, for any transactions under this part.

(c) What actions are prohibited in an exchange/sale transaction?

(1) Acquisition of personal property not otherwise authorized.

(2) Acquisition of personal property in violation of:

(i) Any restriction on procurement of a commodity or commodities; or

(ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(iii) Any contractual obligation.

(3) Transfer, exchange, or sale of Nuclear Regulatory Commission-controlled materials unless you meet the requirements of § 101-42.1102-4 of this subchapter.

(4) Exchange or sale of controlled substances, unless you meet the requirements of § 101-42.1102-3 of this subchapter.

(5) Transfer, exchange, or sale of scrap materials, except in the case of scrap gold for fine gold.

(6) Exchange or sale of property which was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency certifies that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(7) Exchange or sale of property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(8) Exchange or sale of combat material without first demilitarizing it in accordance with applicable regulations.

(9) Exchange or sale of Flight Safety Critical Aircraft Parts unless you meet the provisions of § 101-37.610 of this chapter.

**§ 101-46.203 What special authorizations have been made for use of the exchange/sale authority?**

(a) You may exchange, without monetary appraisal or detailed listing or reporting, books and periodicals in your libraries not needed for permanent use for other books and periodicals.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group or the requirement in § 101-46.202(b)(3), provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

**Subpart 101-46.3—Exchange and Sale Procedures**

**§ 101-46.300 What are the exchange procedures?**

(a) Most exchange transactions should occur when a vendor delivers a replacement item and removes the item being replaced. This is the most efficient and cost effective exchange procedure because the item being replaced may remain in use up to the time the replacement item is delivered, when it is immediately removed by the vendor, and storage, handling, and administrative costs are minimized.

(b) You may internally reassign eligible items no longer needed by one organizational unit to another unit for exchange with the supplier of a replacement item. Physical movement of the reassigned item is not required unless specified by the contract.

**§ 101-46.301 What are the sales procedures?**

(a) The methods of sale, terms and conditions of sale, and forms prescribed in § 101-45.304 of this subchapter shall be used in the sale of property being replaced, except for the provisions of § 101-45.304-2(a) of this subchapter regarding negotiated sales. Section 3709, Revised Statutes (41 U.S.C. 5), is applicable to such sales and specifies the following conditions under which property being replaced can be sold by negotiation:

(1) The reasonable value involved in the contract does not exceed \$500, or

(2) Otherwise authorized by law.

(b) Property eligible for exchange/sale may be sold by negotiation at fixed prices in accordance with the provisions of § 101-45.304-2(b) of this subchapter.

**§ 101-46.302 What are the accounting requirements for the proceeds of the sale?**

Except as otherwise authorized by law, proceeds from sales of personal property disposed of under this part must be accounted for in accordance with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

Dated: September 2, 1997.

**G. Martin Wagner,**

*Associate Administrator for Governmentwide Policy.*

[FR Doc. 97-23669 Filed 9-5-97; 8:45 am]

BILLING CODE 6820-24-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Inspector General**

**42 CFR Parts 1000, 1001, 1002 and 1005**

RIN 0991-AA87

**Health Care Programs: Fraud and Abuse; Revised OIG Exclusion Authorities Resulting From Public Law 104-191**

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This rulemaking addresses proposed revisions to the OIG's sanction authorities in conjunction with sections 211, 212 and 213 of the Health Insurance Portability and Accountability Act of 1996, along with other technical and conforming changes to the OIG exclusion authorities set forth in 42 CFR parts 1000, 1001, 1002 and 1005. These proposed revisions are specifically designed to expand the protection of certain basic fraud authorities, and revise and strengthen the current legal authorities pertaining to exclusions from the Medicare and State health care programs.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on November 7, 1997.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-20-P, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG-20-P.

**FOR FURTHER INFORMATION CONTACT:**

Joel Schaer, (202) 619-0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:** Comments will be available for public inspection September 22, 1997 in Room 5550 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m., (202) 619-0089.

**I. Background**

**A. Overview of OIG Exclusion Authorities**

All exclusions imposed by the Office of Inspector General (OIG) are based on the authorities set forth in sections 1128, 1156 and 1892 of the Social Security Act (Act). In imposing these exclusions, the Secretary's primary objective and obligation is to protect the health and safety of patients receiving care under the Medicare and State health care programs, and to safeguard the integrity of these programs. The authorities contained in these sections of the Act were designed to protect the programs and their beneficiaries from unfit health care providers, individuals and businesses whose behavior has demonstrated that they pose a risk to program beneficiaries or to the integrity of the Medicare and State health care programs.

In 1987, the OIG's civil administrative sanction authorities were significantly revised and expanded by the Medicare and Medicaid Patient and Program Protection Act (MMPPPA), Public Law 100-93. Congress enacted MMPPPA "to improve the ability of the [Department] to protect the Medicare and Medicaid programs for fraud and abuse, and to protect the beneficiaries of these programs from incompetent practitioners and from inappropriate and inadequate care." MMPPPA authorized both mandatory and discretionary program exclusions intended to protect the integrity of the Medicare and State health care programs, as well as beneficiaries.

**Mandatory exclusions.** Section 1128(a) of the Act specifically sets forth the exclusion authorities with *mandated* enforcement provisions. This section of the Act requires the OIG to exclude from program participation any individuals or entities convicted of a *program-related* crime or patient abuse or neglect. These mandatory exclusions must be imposed for a minimum 5-year period.

**Permissive exclusions.** In addition, section 1128(b) sets forth a variety of sanction authorities all of which are *permissive* authorities that do not