

is interested in the range of concentrations. Also of interest is how the mixtures are packaged, distributed, type of application, and the target market (e.g., type of industry, availability at retail, Internet sales). This information will be used to propose regulations to exempt those chemical mixtures that, according to 21 U.S.C. 802(39)(A)(v), are "formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered."

Such information may be submitted to the address listed above and is requested by September 17, 2002. Information designated as confidential or proprietary will be treated accordingly. The release of confidential business information that is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), is governed by section 310(c) of the CSA (21 U.S.C. 830(c)) and the Department of Justice procedures set forth in 28 CFR 16.7.

Dated: July 1, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 02-17903 Filed 7-18-02; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Part 9

RIN 1512-AC62

[Re: Notice No. 947]

#### Establishment of the Oak Knoll District Viticultural Area (2002R-046P); Correction

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects the preamble to a proposed rule published in the **Federal Register** of July 9, 2002. In Notice No. 947, Establishment of the Oak Knoll District Viticultural Area, the address listed for submitting comments to the Bureau of Alcohol, Tobacco and Firearms by e-mail is incorrect. This notice contains the correct address for submitting comments by e-mail.

**DATES:** Comments on Notice No. 947 must be received by September 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joanne Brady, Specialist, Regulations

Division (Philadelphia, PA), Bureau of Alcohol, Tobacco and Firearms, The Curtis Center, Suite 875, Independence Square West, Philadelphia, PA 19106; telephone 215-597-5288 or e-mail [JCB Brady@phila.atf.treas.gov](mailto:JCB Brady@phila.atf.treas.gov).

#### Correction

In proposed rule FR Doc. 02-16972, beginning on page 45437 in the issue of July 9, 2002, make the following correction. On page 45438, in the third column, under the *Submitting Comments* heading, correct the fourth paragraph to read as follows:

"By e-mail: Comments may be submitted by e-mail to [nprm@atfhq.atf.treas.gov](mailto:nprm@atfhq.atf.treas.gov). E-mail comments must:

- (1) Contain your name, mailing address, and e-mail address;
- (2) Reference this notice number; and
- (3) Be legible when printed.

We will not acknowledge the receipt of e-mail. We will treat comments submitted by e-mail as originals."

Signed: July 12, 2002.

**William H. Foster,**

*Deputy Chief, Regulations Division.*

[FR Doc. 02-18321 Filed 7-18-02; 8:45 am]

BILLING CODE 4810-31-M

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101-45 and 102-38

[FPMR Amendment H- ]

RIN 3090-AH10

#### Sale of Personal Property

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

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by revising coverage on the sale of personal property and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**DATES:** Your comments must reach us by August 19, 2002, to be considered in the formulation of a final rule.

**ADDRESSES:** Written comments should be submitted to: Rodney Lantier, Regulatory Secretariat (MVP), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW, Washington, DC 20405.

Address e-mail comments to: [RIN.3090-AH10@gsa.gov](mailto:RIN.3090-AH10@gsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Robert Holcombe, Director, Personal Property Management Policy Division (MTP), 202-501-3828.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule updates, streamlines, and clarifies FPMR part 101-45 and moves the part into the Federal Management Regulation (FMR). The proposed rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. 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.

##### B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

##### C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does 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 the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

##### E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

##### List of Subjects in 41 CFR Parts 101-45 and 102-38.

Government property management, Surplus Government property.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

##### CHAPTER 101—[AMENDED]

1. Part 101-45 is revised to read as follows:

##### PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

**Authority:** 40 U.S.C. 484 and 486(c).

**§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).**

For information on sale of personal property previously contained in this part, *see* FMR part 38 (41 CFR part 102–38).

**CHAPTER 102—[AMENDED]**

2. Part 102–38 is added to subchapter B of chapter 102 to read as follows:

**PART 102–38—SALE OF PERSONAL PROPERTY**

**Subpart A—General Provisions**

Sec.

- 102–38.5 What does this part cover?
- 102–38.10 What is the governing authority for this part?
- 102–38.15 Who must comply with these sales provisions?
- 102–38.20 Must we follow the regulations of this part when selling all personal property?
- 102–38.25 To whom do “we”, “you”, and their variants refer?
- 102–38.30 How do we request a deviation from the provisions of this part?

**Definitions**

- 102–38.35 What definitions apply to this part?

**Responsibilities**

- 102–38.40 Who may sell personal property?
- 102–38.45 What are our responsibilities in selling personal property?
- 102–38.50 What must we do when we suspect non-compliance with the provisions of this part?
- 102–38.55 What must we do when selling personal property?
- 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?
- 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?
- 102–38.70 May we abandon, destroy, or donate personal property either prior to or after trying to sell it?

**Subpart B—Sales Process**

**Methods of Sale**

- 102–38.75 How may we sell personal property?
- 102–38.80 Which method of sale should we use?

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- 102–38.85 What is a sealed bid sale?
- 102–38.90 What is a spot bid sale?
- 102–38.95 What is an auction?

**Negotiated Sales**

- 102–38.100 What is a negotiated sale?
- 102–38.105 Under what conditions may we negotiate sales of personal property?
- 102–38.110 Who approves our determinations to conduct negotiated sales?
- 102–38.115 What are the specific reporting requirements for negotiated sales?

- 102–38.120 When may we sell personal property at fixed prices (fixed price sale)?
- 102–38.125 May we sell personal property at fixed prices to State agencies?

**Advertising**

- 102–38.130 Must we publicly advertise sales of Federal personal property?
- 102–38.135 What constitutes a public advertisement?
- 102–38.140 What must we include in the public notice on sale of personal property?

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- 102–38.145 Must we allow for inspection of the personal property to be sold?
- 102–38.150 How long is the inspection period?

**Offer To Sell**

- 102–38.155 What is an offer to sell?
- 102–38.160 What must be included in the offer to sell?
- 102–38.165 Are the terms and conditions in the offer to sell binding?

**Subpart C—Bids**

**Buyer Eligibility**

- 102–38.170 May we sell Federal personal property to anyone?
- 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?
- 102–38.180 May we sell Federal personal property to a Federal employee?
- 102–38.185 May we sell Federal personal property to State or local governments?

**Acceptance of Bids**

- 102–38.190 What is considered a responsive bid?
- 102–38.195 Must bidders use authorized bid forms?
- 102–38.200 Who may accept bids?
- 102–38.205 Must we accept all bids?
- 102–38.210 What happens when bids have been rejected?
- 102–38.215 When may we disclose the bid results to the public?
- 102–38.220 What must we do when the highest bids received have the same bid amount?
- 102–38.225 What are the additional requirements in the bid process?

**Bid Deposits**

- 102–38.230 Is a bid deposit required to buy personal property?
- 102–38.235 What types of payment may we accept as bid deposits?
- 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

**Late Bids**

- 102–38.245 Do we consider late bids for award?
- 102–38.250 How do we handle late bids that are not considered?

**Modification or Withdrawal of Bids**

- 102–38.255 May we allow a bidder to modify or withdraw a bid?

**Mistakes in Bids**

- 102–38.260 Who makes the administrative determinations regarding mistakes in bids?
- 102–38.265 Must we keep records on administrative determinations?
- 102–38.270 May a bidder protest the determinations made on sales of personal property?

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- 102–38.275 To whom do we award the sales contract?
- 102–38.280 What happens when there is no award?

**Transfer of Title**

- 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

**Payments**

- 102–38.290 What types of payment may we accept?

**Disposition of Proceeds**

- 102–38.295 May we retain sales proceeds?
- 102–38.300 What happens to the remaining portion of the proceeds if we are authorized to retain only a portion of the proceeds from the sale of personal property?

**Disputes**

- 102–38.305 How do we handle disputes involved in the sale of Federal personal property?
- 102–38.310 Are we required to use the Disputes clause in the sale of personal property?
- 102–38.315 Are we required to use the Alternative Disputes Resolution for sales contracts?

**Subpart E—Other Governing Statutes**

- 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

**Antitrust Requirements**

- 102–38.325 What are the requirements pertaining to antitrust laws?

**Subpart F—Reporting Requirements**

- 102–38.330 Are there any reports that we must submit to GSA?
- 102–38.335 Is there any additional personal property sales information that we must submit to GSA?

**Subpart G—Sales to State and Local Governments**

- 102–38.340 How may we sell personal property to State and local governments?
- 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property (SASP) wants to buy it?
- 102–38.350 Are State and local governments subject to the same payment requirements as public buyers?
- 102–38.355 Do the regulations of this part apply to SASPs?

**Authority:** 40 U.S.C. 484 and 40 U.S.C. 486(c).

**Subpart A—General Provisions****§ 102–38.5 What does this part cover?**

This part prescribes the policies governing the sale of Federal personal property, including:

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

**Note to § 102–38.5:** You must follow additional guidelines in part 101–42 of this title for the sale of personal property that has special handling requirements or property containing hazardous materials, such as firearms, munitions list items (as defined in § 102–36.40 of this chapter), animals, medical devices, all terrain vehicles, precious metals, etc. Additional requirements for the sale of aircraft and aircraft parts are provided in part 101–37 of this title.

**§ 102–38.10 What is the governing authority for this part?**

Sections 203 and 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484 and 486(c)), as amended (Property Act), provide the authority for the regulations in this part governing the sale of Federal personal property.

**§ 102–38.15 Who must comply with these sales provisions?**

All agencies in the executive, legislative, and judicial branches of the Government must comply with these sales provisions, except the Senate, House of Representatives, and activities under the direction of the Architect of the Capitol.

**§ 102–38.20 Must we follow the regulations of this part when selling all personal property?**

Generally, yes, you must follow the regulations of this part when selling all personal property, however:

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use; and

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions.

**§ 102–38.25 To whom do “we”, “you”, and their variants refer?**

Unless otherwise indicated, use of pronouns “we”, “you”, and their variants throughout this part refer to the holding agency responsible for the sale of the property.

**§ 102–38.30 How do we request a deviation from the provisions of this part?**

Refer to § 102–2.60 of this chapter for information on how to obtain a deviation from this part.

**Definitions****§ 102–38.35 What definitions apply to this part?**

The following definitions apply to this part:

*Bid* means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

*Bidder* means any entity that is responding to or has responded to an offer to sell.

*Estimated fair market value* means the selling agency’s best estimate of what the property would be sold for if offered for public sale.

*Identical bids* means bids for the same item of property having the same total price.

*Personal property* means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

*State Agency for Surplus Property (SASP)* means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act (40 U.S.C. 484(j)).

*State or local government* means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

**Responsibilities****§ 102–38.40 Who may sell personal property?**

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have GSA, a contractor, or another Federal agency conduct the sale for you, provided that only authorized Federal officials approve the sale.

**§ 102–38.45 What are our responsibilities in selling personal property?**

Your responsibilities in selling personal property are to:

(a) Ensure the sale complies with the provisions of the Property Act and regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

**§ 102–38.50 What must we do when we suspect non-compliance with the provisions of this part?**

If you suspect non-compliance with the provisions of this part, you must:

(a) Refer any violations of the regulations in this part, or fraud, bribery or criminal collusion against the Government to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to GSA, Property Management Division (FBP), Washington, DC, 20406, a report of any compliance investigations concerning violations of these provisions. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), Washington, DC 20405.

**§ 102–38.55 What must we do when selling personal property?**

When selling personal property, you must ensure that:

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

**§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?**

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the

buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

**§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?**

Federal agencies have first claim to excess or surplus personal property reported to GSA. When a need is expressed by a Federal agency, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

**§ 102–38.70 May we abandon, destroy, or donate personal property either prior to or after trying to sell it?**

(a) Yes, you may abandon, destroy, or donate personal property either prior to or after trying to sell it, but only when you have made a written determination that:

- (1) The personal property has no commercial value; or
- (2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this chapter that are applicable to the abandonment, destruction, or donation of personal property in general, and excess personal property in particular.

**Subpart B—Sales Process**

**Methods of Sale**

**§ 102–38.75 How may we sell personal property?**

(a) You may sell personal property upon such terms and conditions as the Administrator of General Services deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

- (1) Inspection;
- (2) Condition and location of property;
- (3) Eligibility of bidders;
- (4) Consideration of bids;
- (5) Bid deposits and payments;
- (6) Submission of bids;
- (7) Bid price determination;
- (8) Title;
- (9) Delivery, loading, and removal of property;
- (10) Default, returns, or refunds;
- (11) Modifications, withdrawals, or late bids;
- (12) Requirements to comply with applicable laws and regulations;

(13) Certificate of independent price determinations;

(14) Covenant against contingent fees;

(15) Limitation on Government's liability; and

(16) Award of contract.

(b) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

**§ 102–38.80 Which method of sale should we use?**

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102-38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as:

- (1) Type and quantity of property;
- (2) Location of property;
- (3) Potential market;
- (4) Cost to prepare and conduct the sale;
- (5) Available facilities; and
- (6) Sales experience of the selling activity.

(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

**Competitive Sales**

**§ 102–38.85 What is a sealed bid sale?**

A sealed bid sale is a sale where bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

**§ 102–38.90 What is a spot bid sale?**

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

**§ 102–38.95 What is an auction?**

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are

submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property. The Government reserves the right to reject any or all bids.

**Negotiated Sales**

**§ 102–38.100 What is a negotiated sale?**

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

**§ 102–38.105 Under what conditions may we negotiate sales of personal property?**

You may negotiate sales of personal property when:

(a) The personal property has an estimated fair market value of less than \$15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and that the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, e.g., sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by the Federal Property and Administrative Services Act of 1949, as amended, or other law.

**§ 102–38.110 Who approves our determinations to conduct negotiated sales?**

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

**§ 102–38.115 What are the specific reporting requirements for negotiated sales?**

For negotiated sales of personal property, you must:

(a) In accordance with section 203(e)(6) of the Property Act (40 U.S.C. 484(e)(6)), and in advance of the sale, submit to the oversight committees for GSA in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of \$15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than section 203(e) of the Property Act; and

(b) Report annually to GSA, Personal Property Management Policy Division (MTP), Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of \$5,000. You may submit the report electronically or manually (*see* § 102–38.330).

**§ 102–38.120 When may we sell personal property at fixed prices (fixed price sale)?**

You may sell personal property at fixed prices (fixed price sale) when the head of your agency determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

**§ 102–38.125 May we sell personal property at fixed prices to State agencies?**

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, see Subpart G of this part.

**Advertising****§ 102–38.130 Must we publicly advertise sales of Federal personal property?**

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

**§ 102–38.135 What constitutes a public advertisement?**

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

**§ 102–38.140 What must we include in the public notice on sale of personal property?**

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as:

- (a) Date, time and location of sale;
- (b) General categories of property being offered for sale;
- (c) Inspection period;
- (d) Method of sale (*i.e.*, spot bid, sealed bid, auction);
- (e) Selling agency; and
- (f) Who to contact for additional information.

**Pre-Sale Activities****§ 102–38.145 Must we allow for inspection of the personal property to be sold?**

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection.

**§ 102–38.150 How long is the inspection period?**

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should consider such factors as the circumstances of sale, volume of property, location of the sales facility, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspection.

**Offer To Sell****§ 102–38.155 What is an offer to sell?**

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is awarded.

**§ 102–38.160 What must be included in the offer to sell?**

- The offer to sell must include:
- (a) Sale date and time;
  - (b) Method of sale;

(c) Description of property being offered for sale;

(d) Selling agency;

(e) Location of property;

(f) Time and place for receipt of bids;

(g) Acceptable forms of bid deposits and payments; and

(h) Terms and conditions of sale, including any specific restrictions and limitations.

**§ 102–38.165 Are the terms and conditions in the offer to sell binding?**

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is awarded.

**Subpart C—Bids****Buyer Eligibility****§ 102–38.170 May we sell Federal personal property to anyone?**

Generally, you may sell Federal personal property to anyone. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

**§ 102–38.175 How do we find out if a person or entity has been suspended or debarred from doing business with the Government?**

Refer to the List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at <http://epls.arnet.gov>. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

**§ 102–38.180 May we sell Federal personal property to a Federal employee?**

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. For purposes of this section, the term “Federal employee” also applies to an immediate member of the employee’s household.

**§ 102–38.185 May we sell Federal personal property to State or local governments?**

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sale to State or local governments are contained in Subpart G of this part.

**Acceptance of Bids****§ 102–38.190 What is considered a responsive bid?**

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of submission. Only responsive bids may be considered for award.

**§ 102–38.195 Must bidders use authorized bid forms?**

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if:

- (a) The bidder accepts all the terms and conditions of the offer to sell; and
- (b) Award of the bid would result in a binding contract.

**§ 102–38.200 Who may accept bids?**

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

**§ 102–38.205 Must we accept all bids?**

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

**§ 102–38.210 What happens when bids have been rejected?**

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

**§ 102–38.215 When may we disclose the bid results to the public?**

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot bid sale or auction, all bids are disclosed as they are submitted. No information other than names will be disclosed regarding the bidder(s).

**§ 102–38.220 What must we do when the highest bids received have the same bid amount?**

When the highest bids received have the same bid amount, you must consider other factors of the sale (e.g., timely removal of the property, terms of

payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

**§ 102–38.225 What are the additional requirements in the bid process?**

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice.

**Bid Deposits****§ 102–38.230 Is a bid deposit required to buy personal property?**

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

**§ 102–38.235 What types of payment may we accept as bid deposits?**

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, see § 102–2.135 of this chapter.

**§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?**

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, then you should return the deposit bond to the bidder.

**Late Bids****§ 102–38.245 Do we consider late bids for award?**

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

**§ 102–38.250 How do we handle late bids that are not considered?**

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

**Modification or Withdrawal of Bids****§ 102–38.255 May we allow a bidder to modify or withdraw a bid?**

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

**Mistakes in Bids****§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?**

The administrative procedures for handling mistakes in bids are contained in FAR part 14, subpart 14.407, Mistakes in Bids (48 CFR part 14). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority in your agency, who must not re-delegate this authority.

**§ 102–38.265 Must we keep records on administrative determinations?**

Yes, you must:

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General.

**§ 102–38.270 May a bidder protest the determinations made on sales of personal property?**

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

**Subpart D—Completion of Sale****Awards****§ 102–38.275 To whom do we award the sales contract?**

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

**§ 102–38.280 What happens when there is no award?**

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this chapter.

**Transfer of Title****§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?**

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

**Payments****§ 102–38.290 What types of payment may we accept?**

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, *e.g.*, cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

**Disposition of Proceeds****§ 102–38.295 May we retain sales proceeds?**

Generally, no, you may not retain sales proceeds. You must deposit all proceeds from the sale of personal property as miscellaneous receipts in the U.S. Treasury. However, you may retain sales proceeds if one of the following applies:

(a) You have statutory authority to retain proceeds from sales of personal property;

(b) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this chapter;

(c) You sold property that was contractor inventory and the contract provisions authorize the proceeds of sale to be credited to the cost of the contract or subcontract;

(d) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this chapter; or

(e) You sold property related to waste prevention and recycling programs, under the authority of Section 608 of Public Law 105–277 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681–514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

**§ 102–38.300 What happens to the remaining portion of the proceeds if we are authorized to retain only a portion of the proceeds from the sale of personal property?**

If you are authorized by law or another provision to retain a portion of the sales proceeds to cover your direct costs, you must deposit any remaining unused balance as miscellaneous receipts in the U.S. Treasury. Also, any unused balance not applied toward the purchase of replacement property under § 102–38.295(d) must be deposited as miscellaneous receipts in the U.S. Treasury.

**Disputes****§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?**

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) 48 CFR part 33.

**§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?**

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

**§ 102–38.315 Are we required to use the Alternative Disputes Resolution for sales contracts?**

No, you are not required to use the Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements

of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651 *et seq.*).

**Subpart E—Other Governing Statutes****§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?**

Yes, in addition to the Property Act the sale of Federal personal property is governed by other statutory requirements, specifically antitrust requirements that are discussed in § 102–38.325.

**Antitrust Requirements****§ 102–38.325 What are the requirements pertaining to antitrust laws?**

When the sale of personal property has an estimated fair market value of \$3 million or more, or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property. You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

**Subpart F—Reporting Requirements****§ 102–38.330 Are there any reports that we must submit to GSA?**

Yes, there are two sales reports you must submit to GSA, Personal Property Management Policy Division (MTP), Washington, DC 20405:

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of \$5,000 (*see* § 102–38.115). For each negotiated sale meeting that criterion, provide the following:

- (1) Description of the property (including quantity and condition);
- (2) Acquisition cost and date (if not known, estimate and so indicate);
- (3) Estimated fair market value (including date of estimate and name of estimator);
- (4) Name and address of purchaser;
- (5) Date of sale;
- (6) Gross and net sales proceeds; and
- (7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each

fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this chapter (see § 102–39.75).

**§ 102–38.335 Is there any additional personal property sales information that we must submit to GSA?**

Yes, you must report to GSA's Asset Disposition and

Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

**Subpart G—Sales to State and Local Governments**

**§ 102–38.340 How may we sell personal property to State and local governments?**

You may sell Government personal property to State and local governments through:

- (a) Competitive sale to the public;
- (b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or
- (c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

**§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property (SASP) wants to buy it?**

No, you are not required to withdraw the item from public sale if the property has been advertised.

**§ 102–38.350 Are State and local governments subject to the same payment requirements as public buyers?**

Generally, yes, State and local governments have the same general payment requirements as other buyers, and payment must be made within 30 calendar days after purchase. However, you may waive the requirement for bid deposits and payments prior to removal of the property. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

**§ 102–38.355 Do the regulations of this part apply to SASPs?**

Yes, SASPs must follow the regulations in this part when conducting sales on behalf of GSA of Government personal property in their custody.

Dated: June 28, 2002.

**G. Martin Wagner,**

*Associate Administrator, Office of Governmentwide Policy.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 83**

**Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act of 2000; Meetings**

**AGENCY:** Department of Health and Human Services.

**ACTION:** Proposed rule; notice of meetings and opportunity to comment.

**SUMMARY:** The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), announces public meetings to present the U.S. Department of Health and Human Services (HHS) proposed rule for adding classes of employees to the Special Exposure Cohort Under the Energy Employees Occupational Illness Compensation Program Act.

**FOR FURTHER INFORMATION CONTACT:**

Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

**SUPPLEMENTARY INFORMATION:**

*Time and Date:* 7 p.m.–9 p.m., July 23, 2002.

*Place:* Buffalo Niagara Marriott, 1340 Millersport Highway, Amherst, New York. Telephone: 716/689–6900.

*Time and Date:* 7 p.m.–9 p.m., July 25, 2002.

*Place:* Sharonville Convention Center, 11355 Chester Road, Sharonville, Ohio. Telephone: 513/771–7744.

*Time and Date:* 7 p.m.–9 p.m., August 7, 2002.

*Place:* Red Lion Hotel, Richland Hanford House, 802 George Washington Way, Richland, Washington. Telephone: 509/943–7611.

*Time and Date:* 7 p.m.–9 p.m., August 8, 2002.

*Place:* Espanola Senior Citizens Center, 735 Vietnam Veterans' Memorial Park Road, Espanola, New Mexico. Telephone: 505/753–9850.

*Status:* Open to the public, limited only by the space available. The meeting rooms accommodate approximately 150 people.

*Matters To Be Discussed:* In July 2001, the U.S. Department of Labor (DOL) began a new federal compensation program under the Energy Employees' Occupational Illness Compensation Program Act (the Act). The compensation program serves employees of the U.S. Department of Energy (DOE), its contractors, or subcontractors, and the employees of Atomic Weapons Employers designated by DOE, and survivors of these employees. The compensation program covers claims for current or former employees who developed chronic beryllium disease, beryllium sensitization, silicosis, or cancers associated with certain defined occupational exposures occurring in the performance of duty for U.S. nuclear weapons programs. Claims for cancer have to meet conditions related to one of two general requirements: either (1) the cancer of the employee has to be found to have been at least as likely as not caused by radiation doses incurred by the employee in the performance of duty for the nuclear weapons programs, or (2) the employee must be a member of the "Special Exposure Cohort" and have developed one of 22 specific cancer types, referred to as "specified cancers."

The Act defined the initial membership of the Special Exposure Cohort to include qualified employees who worked at any of three gaseous diffusion plants of the U.S. Department of Energy or a nuclear weapons test site in Amchitka, Alaska. However, the Act also allows classes of employees from facilities of DOE or of Atomic Weapons Employers to petition to be added to the Special Exposure Cohort. The outcome of the petitions will be decided by the Secretary, HHS. The procedures for making and deciding such petitions are described in a rule (a regulation) recently proposed by HHS for public comment (42 CFR part 83: "Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000;" Notice of Proposed Rulemaking; 67 FR 42962; June 25, 2002). The public comment period ends on August 26, 2002.

*Purpose:* The purpose of these public meetings is to present and explain the recent proposed rule by the HHS on how it would consider petitions to add classes of employees to the "Special Exposure Cohort" established under the Energy Employees' Occupational Illness Compensation Program Act. The meetings will allow members of the public to comment in person on this proposed regulation.