

technical errors in § 447.400(a) and § 447.405 listed on page 66701. One correction ensures consistency between two sentences in the same paragraph and the other restores text inadvertently omitted from the final rule that had been included in the May 11, 2012 notice of proposed rulemaking (77 FR 27671) on pages 26789–90. Thus, we are correcting page 66701 to reflect the correct information.

### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. The policies expressed in final rule (77 FR 66670) have been previously subjected to notice and comment procedures. This notice merely provides a technical correction to the final rule and does not make substantive changes to the policies or methodologies that were expressed in the final rule. One technical correction ensures consistency of two sentences of the same paragraph, and the other restores text that had been present in the notice of proposed rulemaking (77 FR 27671) but inadvertently omitted from the final rule text. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice and find good cause to waive notice and comment procedures and the 30-day delay in the effective date for this correction notice.

### IV. Correction of Errors

In FR Doc. 2012–26507 of November 6, 2012 (77 FR 66670), make the following corrections:

1. On page 66701, in the first column; in the last full sentence, in the first partial paragraph, the sentence reads, “A physician self-attests that he/she:”.

Correct the sentence to read, “Such physician then attests that he/she:”.

2. On the same page, in the same column; in the last full paragraph, paragraph (a) reads, “For CYs 2013 and 2014, a state must pay for physician services described in § 447.400 based on:”. Correct the sentence to read, “For CYs 2013 and 2014, a state must pay for physician services described in § 447.400 based on the lower of:”.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 3, 2012.

**Oliver Potts,**

*Deputy Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2012–29640 Filed 12–13–12; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF ENERGY

### 48 CFR Parts 908, 945, 952, and 970

**RIN 1991–AB86**

### Acquisition Regulation: Department of Energy Acquisition Regulation, Government Property

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to conform to the Federal Acquisition Regulation (FAR), remove out-of date government property coverage, and update references. This rule does not alter substantive rights or obligations under current law.

**DATES:** *Effective Date:* January 14, 2013.

**FOR FURTHER INFORMATION CONTACT:** Helene Abbott at (202) 287–1593 or via email: [helene.abbott@hq.doe.gov](mailto:helene.abbott@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

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### I. Background

DOE is amending Parts 908, Required Sources of Supplies and Services, 945, Government Property, 952, Solicitation Provisions and Contract Clauses, and 970, Management and Operating Contracts, to remove out-of-date coverage, to update references and to conform to the FAR.

This final rule contains several administrative changes that will not substantially change the content of the regulation. Changes include adding correct citations; correcting office names; updating vehicle license tag ordering procedures; correcting the excess personal property screening timeframe; revising the contractor's reporting of sensitive item listing; and retaining the definition of “Capital Equipment” which was included in the proposed rule for deletion. After further analysis, it is necessary to retain the “Capital Equipment” definition for the purpose of this rule. In addition, during the review of the final rule, it was discovered that section 952.245–5 referenced FAR 52.245–5 which is “Reserved” under the FAR rewrite.

### II. Comment Resolution.

This final rule follows a notice of proposed rulemaking published in the **Federal Register** on March 4, 2011, 76 FR 11985. There were no comments received as a result of that proposed rulemaking.

### III. Section-by-Section Analysis

DOE is amending the DEAR as follows:

1. Section 908.1102 is amended by redesignating paragraph (a) (4) as 908.1102–70 Vehicle leasing to conform to the FAR convention, and adding the phrase “All subsequent lease renewals or extensions may be exercised only when General Service Administration (GSA) has advised that it cannot furnish the vehicle(s) as prescribed herein.”

2. Section 908.1104(f) is amended by removing “Federal Property Management Regulation (FPMR) 41 CFR 101–38.6.” and adding in its place “Federal Management Regulation (FMR) 41 CFR 102–34.160, 102–34.175 and 102–34.80” to provide the updated citation.

3. Section 908.7101–2 (a) is amended by removing “FPMR 41 CFR 101–25.304, 101–26.501, and 101–38.13 and DOE–PMR 41 CFR 109–25.304, 109–

38.13, and 109–38.51” and adding in its place “Federal Property Management Regulations (FPMR) 41 CFR 101–26.501, and FMR 41 CFR 102–34, and Department of Energy-Property Management Regulations (DOE-PMR) 41 CFR 109–26.501” to provide the updated citation.

4. Section 908.7101–2 paragraph (b) is amended by removing “on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice,” and adding in its place “utilizing GSA’s on-line system (Auto Choice)” to update the procedures.

5. Section 908.7101–3 is amended by removing in the second sentence “Office of Property Management” and adding in its place “Personal Property Policy Division” to update office name. Remove “those” in the third sentence and remove in the last sentence, “(See DOE-PMR 41 CFR 109–38.5102–4)” and add in its place 41 CFR 109–26.501–1 to correct grammar and to remove an out-of-date citation.

6. Section 908.7101–4 is amended in paragraph (a) by removing “FPMR 101–38.9 and DOE-PMR 41 CFR 109–38.9” and adding in its place “41 CFR 102–34.270” and 41 CFR 109–38.402 to update the citation.

7. Section 908.7101–5 is amended in the third sentence by removing “DOE-PMR 41 CFR 38.5102” and adding in its place “41 CFR 109–26.501–50 and 109–26.501–51”, to update the citation.

8. Section 908.7101–6 is amended in paragraph (a) by removing in the second sentence “Office of Property Management” and replacing it with “Personal Property Policy Division” to update office name; and remove the last three sentences and adding in their place “Such forecast shall be submitted to the Property Executive, or designee, when requested.

9. Section 908.7101–6 is amended in paragraph (b) by removing “Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will” and adding in its place “Approved sedans, station wagons, and light trucks requisitioned, but not contracted for by GSA until the subsequent fiscal year, shall” to update the procedures.

10. Section 908.7101–7 is amended in paragraph (a) by removing “FPMR 41 CFR 101–38.303” and adding in its place “41 CFR 102–34.140” to update the citation.

11. Section 908.7101–7 is amended in paragraph (b) by removing in the second sentence “Assignments of specific “blocks” of tag numbers and the maintenance of tag records are performed by the “Director, Office of

Property Management,” within the Headquarters procurement organization. Assignments of additional “blocks” of tag numbers will be made upon receipt of written request from field offices” and adding in its place “Assignment of new tag numbers will be made by UNICOR via the UNICOR online vehicle license tag ordering data base. Contractors must obtain approval from their Federal fleet manager or OPMO for ordering authorization to utilize the UNICOR data base. Director, Personal Property Policy Division within the Headquarters procurement organization will maintain tag assignment records issued by UNICOR for new plates” to correct punctuation, update office name and current tag ordering procedures.

12. Section 908.7101–7 is amended in paragraph (e) by removing the sentence and adding in its place “See 41 CFR 109–38.202–2 and 109–38.202–3 for additional guidance.” to update the citation.

13. Section 908.7102 is amended by removing the sentence and adding in its place “Acquisition of aircraft shall be in accordance with 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision.” to update the citation.

14. Section 908.7103 is amended by removing “41 CFR 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and 41 CFR 109–25.302–3 to delete outdated citations.

15. Section 908.7104 is amended by removing “41 CFR 101–25.302–1 and 101–25.302–8, and 41 CFR 109–25.302–1 to delete outdated citations.

16. Section 908.7121 is revised to update the first paragraph to clarify that the contracting officers shall require authorized contractors to follow procedures set forth in paragraphs (a) through (c).

17. Section 908.7121(b) *Precious metals* is revised to update the responsible office in subparagraph (1) and add subparagraph (2) to reference 48 CFR 945.604–1 for contractor identification and reporting for contractor inventory containing precious metals or possessing precious metals excess.

18. Section 908.7121(c) is amended to state that lithium is available from The National Nuclear Security Administration (NNSA), Y–12 National Security Complex in Oak Ridge, TN (Y–12) and that the excess quantities at Y–12 are to be the first source of supply.

19. Part 945 is amended to simplify procedures, clarify language, and eliminate obsolete requirements related to the management and disposition of Government property in the possession of contractors to conform to 48 CFR part 45 Government Property regulation.

20. Section 945.000 is amended by lower casing the first letter of the word “part”; by reversing “operating and management” to read “management and operating”; and by removing the second sentence in its entirety.

21. Section 945.101 is amended adding a definition of sensitive property. For clarity, since the FAR definition of sensitive property was changed under FAC 2005–17 and for further emphasis by DOE, the FAR definition is incorporated by reference. The definition of capital equipment was removed in the proposed rule. However, after further analysis, it has been determined to retain the definition as it is necessary for the purpose of this rule. The definition is amended by removing “a unit acquisition cost of \$5,000” and adding “; dollar threshold for capital equipment is as established by the DOE Financial Management Handbook.”

22. Section 945.102–70 is revised in the first paragraph, first sentence, by removing “Within 30 days after the end of each fiscal year,” and adding in its place “The Head of the Contracting Activity may be required to report” (this language changes what was contained in the proposed rule and provides clarity); and by removing “Director, Office of Property Management,” and adding in its place “Personal Property Policy Division”; in paragraph (e), by removing “dollar” and adding in its place “acquisition”; and in paragraph (e), by removing “as reported on last semiannual asset report (including date of report),”. These changes correct the reporting process and provide the correct title of the receiving activity. Changes pertain to the Property Information Database System (PIDS) which was created by the Idaho National Lab and has been in use since the late 1990’s. The PIDS system is used by both DOE and Contractors alike.

23. Subpart 945.1 is revised to add the new section “945.102–72 Reporting of contractor sensitive property inventory” to reflect the current sensitive property policy. To further streamline approvals for sensitive property list, this section deleted in its entirety and replace with the following language “The contractor must develop and maintain a list of personal property items considered sensitive. Sensitive Items List must be approved by the PA/OPMO annually.”

24. Section 945.3 is amended by redesignating subpart 945.3 and section 945.303–1 as section 945.170 and section 945.170–1, respectively and by reserving section 945.3 and by using lower case letters for “property” and “contractors” in the section 945.170 title, and by adding a period at the end

of “contractors”. These changes are made to conform to the FAR.

25. Subpart 945.4 is amended by removing and reserving this subpart in its entirety to conform to the FAR.

26. Section 945.5 title is amended by removing “Management of Government Property in the Possession of Contractors” and adding in its place “Support Government Property Administration” to conform to the FAR.

27. Section 945.505–11 is removed in its entirety to conform to the FAR.

28. Subpart 945.5 is revised by changing its title to “945.570 Management of Government property in the possession of contractors” to conform to the FAR.

29. Section 945.506 is removed in its entirety.

30. Section 945.570–2 is redesignated as 945.570–1 and is amended at paragraph (c) the second sentence by removing “(GSA Form 1781)”, and adding “via GSA AutoChoice” after “should be processed”. The replaced information updates the DEAR to conform to GSA’s current procedures.

31. Redesignated 945.570–1(f) is amended by removing “Motor Vehicle Rental” and adding in its place “Leasing of Automobiles and Light Trucks”.

32. Section 945.570–7 is redesignated as 945.570–2.

33. Section 945.570–8 is redesignated as 945.570–3 and is revised in section (a) in the first sentence, by removing “(on or before December 1)”.

34. Redesignated 945.570–3(b) is amended after “DOE-owned” by adding “, GSA leased”; before “and/or” and by adding “electronically” before “submit”.

35. Redesignated 945.570–3(b)(1) is amended by removing “DOE Report of Motor Vehicle Data (passenger vehicles)” and adding in its place “Annual Motor Vehicle Fleet Report”.

36. Redesignated section 945.570–3(b)(2) is amended by removing “DOE Report of Truck Data” and adding in its place “Federal Fleet Report (41 CFR 102–34.335)”.

37. Subpart 945.6 is amended by removing the subpart title “Reporting, Redistribution, and Disposal of Contractor Inventory” and adding in its place “Reporting, Reutilization, and Disposal”.

38. Subpart 945.6 is amended by adding a new section “945.602 Reutilization of Government property.” 945.602–3(a)(1) is amended in the second sentence by changing the screening period from 15 days to 12 days, to conform with current procedures.

39. Subpart 945.6 is amended by adding a new section “945.602–70 Local screening”.

40. Section 945.603 is redesignated as 945.670, DOE disposal methods.

41. Section 945.603–70 is amended by redesignating this section as “945.670–1”; and removing “FAR Subpart 45.6” and adding in its place “48 CFR 45.606–3”. This amendment is to conform the DEAR to the FAR.

42. Section 945.603–71 is redesignated as “945.670–2”; and is revised by adding “or its successor” after “41 CFR 109–45.50.”

43. Subpart 945.6 is amended by adding a new section 945.603 Abandonment, destruction or donation of excess personal property which refers to 48 CFR 945.670 for disposal methods. These changes are made to conform to the FAR and move current DEAR information to a new section.

44. Subpart 945.6 is amended by adding a new section 945.604 Disposal of surplus property to conform to the FAR.

45. Section 945.607–2(b) is redesignated as 945.604–1 Recovering precious metals. The office name and address are updated. Paragraph (d) references 945.670 for DOE disposal methods. By adding the other precious metals, we are aligning the DEAR to FAR 46.101.

46. Section 945.608–2 is redesignated as “945.602–3(a)” and is amended by removing subparagraph (b)(1) in its entirety and adding in its place “(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulation 41 CFR 102–36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 12 days.” These changes are made to update the DEAR to the current on-line reporting timeframe.

47. Redesignated section 945.602–3(a)(1)(i) [previously 945.608–2(b)(1)] is amended in the first sentence, by removing “REAPS” and adding in its place “EADS”; in the first sentence, by removing “address code” and adding in its place “Activity Address Code (AAC)”; by removing the second sentence in its entirety and adding in its place “The AAC will be assigned by DOE Headquarters upon receipt of a formal letter of authorization signed by the DOE contracting officer,” and by removing the third sentence in its entirety. These changes are made to update the current procedure.

48. Redesignated section 945.602–3(a)(1)(ii) is amended by removing the sentence in its entirety and adding a new sentence to indicate that any changes to an Activity Address code shall be submitted to the Office of Property Management, Personal Property Policy Division, within the Headquarters procurement organization.

49. The section designated as 945.608–3 is removed. Section 945.602–70 Local screening provides the correct process and title for property screening and disposal.

50. The section designated as 945.608–4 is removed.

51. Section 945.608–5 is redesignated as 945.602–3(b)(2) and is amended in the first paragraph, by adding “(b) *Special screening requirements.* (2) *Special test equipment with commercial components—*” prior to the redesignated text.

52. Section 945.608–5(c) is redesignated as 945.602–3(b)(3).

53. Section 945.608–6 is redesignated as 945.670–3; and is amended in paragraph (a) after requirements, by removing “in accordance with the provisions of FAR 45.608–6.”; in both paragraphs, by removing “Office of Property Management Division” and adding in its place “Personal Property Policy Division”; and in paragraph (b) by removing “HCA” and adding in its place “Procurement Directors”.

54. Section 945.610–4 is redesignated as 945.671; and is amended after “41 CFR 109–43.5 and 45.51” by adding “or its successor”, and adding 48 CFR 45.302 to update correct FAR citation.

55. Section 970.5244–1(k) is amended by removing the paragraph in its entirety and adding in its place “*Government Property*”. The Contractor shall establish and maintain a property management system that complies with criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.”

56. Section 952.245–5 is modified to reference FAR 52.245–1(e)(3) to update citation.

57. Section 970.5244–1 (q)(13) is added to correct an error in the DEAR Final Rule [74 FR 36376–36378, dated July 22, 2009] which omitted “Products made in Federal and penal and correctional institutions—41 CFR 101–26.702.”

58. Section 970.5245–1 is amended by removing and reserving paragraph (i)(1)(ii)(B). This amendment clarifies the contract conditions for property management systems approval.

#### IV. Procedural Requirements

##### A. Review Under Executive Orders 12866 and 13563

This regulatory action has been determined not to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today’s final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned

determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

##### B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

##### C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and which is likely to have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on small entities because it imposes no significant burdens. Any costs incurred by DOE contractors complying with the rule would be reimbursed under the contract.

Accordingly, DOE certifies that this rule would not have a significant

economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required and none has been prepared.

##### D. Review Under the Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements. Information collection or recordkeeping requirements mentioned in this rule relative to the collection of certain contractor data are the same as the previous rule. The clearance number is 1910–4100 with an expiration date of October 31, 2014.

##### E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE’s regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

##### F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

##### G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector of

\$100 million or more in any single year. This rule does not impose a federal mandate on State, local or tribal governments or the private sector.

*H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on family well-being.

*I. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), requires Federal agencies to prepare and submit to OIRA OMB, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note), provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996*

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

*L. Approval by the Office of the Secretary of Energy*

The Office of the Secretary of Energy has approved issuance of this final rule.

**List of Subjects in 48 CFR Parts 908, 945, 952 and 970**

Government procurement.

Issued in Washington, DC, on October 16, 2012.

**Paul Bosco,**

*Director, Office of Acquisition and Project Management, Department of Energy.*

**Joseph W. Waddell,**

*Director, Office of Acquisition Management, National Nuclear Security Administration.*

For the reasons set out in the preamble, the Department of Energy (DOE) amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

**PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

■ 1. The authority citation for part 908 continues to read as follows:

**Authority:** 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

■ 2. Section 908.1102 is revised to read as follows:

**908.1102 Presolicitation requirements.**

■ 3. Section 908.1102-70 is added to read as follows:

**908.1102-70 Vehicle leasing.**

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program. All subsequent lease renewals or extensions may be exercised only when GSA has advised that it cannot furnish the vehicle(s) as prescribed herein.

**908.1104 [Amended]**

■ 4. Section 908.1104 is amended by removing "(FPMR) 41 CFR 101-38.6" in paragraph (f) and adding in its place "Federal Management Regulation (FMR)

41 CFR 102-34.160, 102-34.175, and 102-34.180".

■ 5. Section 908.7101-2 is amended by:

- a. Revising paragraph (a); and
- b. Removing "on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice," in paragraph (b), and adding in its place "utilizing GSA's on-line system (Auto Choice)".

The revision reads as follows:

**908.7101-2 Consolidated acquisition of new vehicles by General Services Administration.**

(a) New vehicles shall be procured in accordance with Federal Property Management Regulations (FPMR) 41 CFR 101-26.501, and 41 CFR 102-1 through 102-220, and Department of Energy Property Management Regulations (DOE-PMR) 41 CFR 109-26.501. Orders for all motor vehicles must be placed utilizing GSA's online vehicle purchasing system (AutoChoice).

\* \* \* \* \*

**908.7101-3 [Amended]**

■ 6. Section 908.7101-3 is amended by:

- a. Removing in the second sentence "Office of Property Management" and adding in its place "Personal Property Policy Division.";
- b. Removing "those" in the third sentence; and
- c. Removing "(See DOE-PMR 41 CFR 109-38.5102-4)" in the last sentence and adding in its place "(See 41 CFR 109-26.501-1)".

**908.7101-4 [Amended]**

■ 7. Section 908.7101-4 is amended by removing "FPMR 41 CFR 101-38.9 and DOE-PMR 41 CFR 109-38.9" in paragraph (a), and adding in its place "41 CFR 102-34.270 and 109-38.402".

**908.7101-5 [Amended]**

■ 8. Section 908.7101-5 is amended by removing "DOE-PMR 41 CFR 109-38.5102," in the third sentence and adding in its place "41 CFR 109-26.501-50 and 109-26.501-51,".

**908.7101-6 [Amended]**

■ 9. Section 908.7101-6 is amended by:

- a. Removing in paragraph (a), in the second sentence "Office of Property Management" and adding in its place "Personal Property Policy Division"; and
- b. Removing the last three sentences in paragraph (a), and adding one sentence in their place to read as set forth below;
- c. Removing "Sedans" and adding "Approved sedans" at the beginning of the first sentence of paragraph (b);

- d. Removing in paragraph (b) “according to an approved forecast” ; and
- e. Removing in paragraph (b) “will” and adding in its place “shall”.

#### 908.7101–6 Acquisition of fuel-efficient vehicles.

(a) \* \* \* Such forecast shall be submitted to the Property Executive, or designee.

\* \* \* \* \*

- 10. Section 908.7101–7 is amended by:

- a. Removing “FPMR 41 CFR 101–38.303.” in paragraph (a) and adding in its place “41 CFR 102–34.140.”;
- b. Revising paragraph (b); and
- c. Removing “DOE–PMR 41 CFR 109–38.3 and 109–38.6” in paragraph (e) and adding in its place “41 CFR 109–38.202–2 and 109–38.202–3”.

The revision reads as follows:

#### 908.7101–7 Government license tags.

\* \* \* \* \*

(b) The letter “E” has been designated as the prefix symbol for all DOE official license tags. Assignment of new tag numbers will be made by UNICOR via the UNICOR online vehicle license tag ordering data base. Contractors must obtain approval from their Federal fleet manager or OPMO for authorization to utilize the UNICOR data base. Director, Personal Property Policy Division, within the Headquarters procurement organization will maintain tag assignment records issued by UNICOR.

\* \* \* \* \*

- 11. Section 908.7102 is revised to read as follows:

#### 908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with 41 CFR 102–33, subpart B and DOE Order 440.2B latest revision.

#### 908.7103 [Amended]

- 12. Section 908.7103 is amended by removing “41 CFR 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403,” and “109–25.302–3.”

#### 908.7104 [Amended]

- 13. Section 908.7104 is amended by removing “101–25.302–1,” “and 101–25.302–8,” and “109–25.302–1.”
- 14. Section 908.7121 is revised to read as follows:

#### 908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials may be unclassified, the specific quantities, destination or use may be classified (see appropriate sections of the

Classification Guide). Contracting officers shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the following procedures:

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Request for orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* (1) NNSA, Y–12 National Security Complex in Oak Ridge, TN is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. The NNSA Y–12 National Security Complex has assigned management of these precious metals to its Management and Operating (M&O) contractor. DOE and NNSA offices and authorized contractors shall coordinate with the Y–12 M&O contractor regarding the availability of these metals prior to purchasing in the open market.

(2) For contractor inventory containing precious metals or possessing precious metals excess, see 945.604–1 for contractor identification and reporting.

(c) *Lithium.* Lithium is available from Y–12 at no cost other than normal packing, handling, and shipping charges from Oak Ridge. The excess quantities at Y–12 are the first source of supply prior to procurement of lithium compounds from any other source.

- 15. Part 945 is revised to read as follows:

### PART 945—GOVERNMENT PROPERTY

Sec.

945.000 Scope of part.

#### Subpart 945.1—General

- 945.101 Definitions.
- 945.102–70 Reporting of contractor-held property.
- 945.102–71 Maintenance of records.
- 945.102–72 Reporting of contractor sensitive property inventory.
- 945.170 Providing Government property to contractors.
- 945.170–1 Policy.

#### Subpart 945.3—[Reserved]

#### Subpart 945.4—[Reserved]

#### Subpart 945.5—Support Government Property Administration

- 945.570 Management of Government property in the possession of contractors.
- 945.570–1 Acquisition of motor vehicles.
- 945.570–2 Disposition of motor vehicles.
- 945.570–3 Reporting motor vehicle data.

#### Subpart 945.6—Reporting, Reutilization, and Disposal

- 945.602 Reutilization of Government property.
- 945.602–3 Screening.
- 945.602–70 Local screening.
- 945.603 Abandonment, destruction or donation of excess personal property.
- 945.604 Disposal of surplus property.
- 945.604–1 Disposal methods.
- 945.670 DOE disposal methods.
- 945.670–1 Plant clearance function.
- 945.670–2 Disposal of radioactively contaminated personal property.
- 945.670–3 Waiver of screening requirements.
- 945.671 Contractor inventory in foreign countries.

**Authority:** 42 U.S.C. 7101, *et seq.*; 50 U.S.C. 2401, *et seq.*

#### 945.000 Scope of part.

This part and 48 CFR part 45 are not applicable to the management of property by management and operating contractors, unless otherwise stated.

#### Subpart 945.1—General

##### 945.101 Definitions.

*Capital equipment*, as used in this part, means personal property items having anticipated service life in excess of two years, regardless of type of funding, and having the potential for maintaining their integrity as capital items, i.e., not expendable due to use; dollar threshold for capital equipment is as established by the DOE Financial Management Handbook.

*Personal property*, as used in this part, means property of any kind or interest therein, except real property, records of the Federal Government, and nuclear and special source materials, atomic weapons, and by-product materials.

*Sensitive property*, as used in this part, has the meaning contained in 48 CFR 45.101.

##### 945.102–70 Reporting of contractor-held property.

The Head of the Contracting Activity may be required to report the following information to the Personal Property Policy Division, within the Headquarters procurement organization:

(a) Name and address of each contractor with DOE personal property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government personal property.

(c) Date contractor’s property management system was approved and by whom (DOE office, Defense Contract

Management Command, or the Office of Naval Research).

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

(e) Total acquisition value of DOE personal property for each DOE contract administered by the contracting activity.

#### **945.102-71 Maintenance of records.**

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

#### **945.102-72 Reporting of contractor sensitive property inventory.**

The contractor must develop and maintain a list of personal property items considered sensitive. Sensitive Items List must be approved by the PA/OPMO annually.

#### **945.170 Providing Government property to contractors.**

##### **945.170-1 Policy.**

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. *Special nuclear material* means uranium enriched in the isotopes U233 or U235, and/or plutonium, other than PU238. The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

#### **Subpart 945.3—[Reserved]**

#### **Subpart 945.4—[Reserved]**

#### **Subpart 945.5—Support Government Property Administration**

##### **945.570 Management of Government property in the possession of contractors.**

###### **945.570-1 Acquisition of motor vehicles.**

(a) GSA Interagency Fleet Management System (GSA-IFMS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA-IFMS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by GSA-IFMS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days after GSA has determined that it cannot provide the required vehicle.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions shall be processed via GSA AutoChoice in accordance with 41 CFR 101-26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Leasing of Automobiles and Light Trucks, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Personal Property Policy Division, within the Headquarters procurement organization shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted

directly to GSA when approved by the contracting officer.

(i) 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.

###### **945.570-2 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 (SF-97).

###### **945.570-3 Reporting motor vehicle data.**

(a) Contractors conducting motor vehicle operations shall forward annually to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned, GSA leased and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and electronically submit the following annual year-end reports to the contracting officer:

(1) Annual Motor Vehicle Fleet Report.

(2) Federal Fleet Report (41 CFR 102-34.335).

#### **Subpart 945.6—Reporting, Reutilization, and Disposal**

##### **945.602 Reutilization of Government property.**

###### **945.602-3 Screening.**

(a) *Standard screening.* (1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Management Regulations 41 CFR 102-36.220, shall be reported for centralized screening in the DOE Energy Asset Disposal System (EADS). Reportable excess personal property will be screened internally via the EADS system for a period of 12 days.

(i) EADS requires the inclusion of a six character Activity Address Code (AAC) which identifies the reporting contractor. The AAC will be assigned by DOE Headquarters upon receipt of a

formal letter of authorization signed by the DOE contracting officer.

(ii) Requests to establish, extend or delete an Activity Address Code shall be submitted by the contracting officer to the Office of Property Management, Personal Property Policy Division, within the Headquarters procurement organization.

(b) *Special screening requirements.* (2) *Special test equipment with commercial components.*—Prior to reporting the property to GSA in accordance with 48 CFR 45.604–1 (a), (b) and (c), the property shall be reported and screened within DOE in accordance with 945.602–3(a) and 945.602–70.

(3) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administration at Headquarters.

#### 945.602–70 Local screening.

Local screening shall be done using EADS.

#### 945.603 Abandonment, destruction or donation of excess personal property.

See 945.670 for DOE disposal methods.

#### 945.604 Disposal of surplus property.

##### 945.604–1 Disposal methods.

(b)(3) *Recovering precious metals.* Contractors generating contractor inventory containing precious metals or possessing precious metals excess to their programmatic requirements, shall identify and promptly report such items to the contracting officer for review, approval and reporting to the DOE Business Center for Precious Metals Sales & Recovery (Business Center). This includes Gold, Silver, Platinum, Rhodium, Palladium, Iridium, Osmium, and Ruthenium in any form, shape, concentration, or purity. Report all RCRA contaminated precious metals, but not radiologically contaminated. The Y–12 NNSA Site Office is responsible for maintaining the DOE Business Center. Precious metals scrap will be reported to the DOE Business Center.

(d) See 945.670 for DOE disposal methods.

#### 945.670 DOE disposal methods.

##### 945.670–1 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in 48 CFR 45.606–3.

##### 945.670–2 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated

property may be found at 41 CFR 109–45.50 and 45.51, or its successor.

#### 945.670–3 Waiver of screening requirements.

(a) The Director of the Personal Property Policy Division, within the Headquarters procurement organization may authorize exceptions from screening requirements.

(b) A request to the Director of the Personal Property Policy Division, within the Headquarters procurement organization for the waiver of screening requirements must be submitted by the Procurement Directors with a justification setting forth the compelling circumstances warranting the exception.

#### 945.671 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with 41 CFR 109–43.5 and 45.41, or its successor and 48 CFR 45.302.

### PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 16. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

#### 952.245–5 [Amended]

■ 17. Section 952.245–5 is amended by removing “FAR 52.245–5” and adding in its place “FAR 52.245–1”.

### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 18. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

■ 19. Section 970.5244–1 is amended by:

- a. Revising the clause date to read as set forth below;
- b. Revising clause paragraph (k); and
- c. Adding paragraph (q)(13).

The revisions and additions read as follows:

#### 970.5244–1 Contractor purchasing system.

\* \* \* \* \*

### CONTRACTOR PURCHASING SYSTEM (JAN 2013)

\* \* \* \* \*

(k) *Government Property.* The Contractor shall establish and maintain a property management system that complies with

criteria in 48 CFR 970.5245–1, Property, and 48 CFR 52.245–1, Government Property.

\* \* \* \* \*

(q) \* \* \*

(13) Products made in Federal penal and correctional institutions—41 CFR 101–26.702.

\* \* \* \* \*

■ 20. Section 970.5245–1 is amended by:

- a. Revising the date of the clause to read as set forth below;
- b. Removing and reserving paragraph (i)(1)(ii)(B).

The revision reads as follows:

#### 970.5245–1 Property.

\* \* \* \* \*

### PROPERTY (JAN 2013)

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) [Reserved];

\* \* \* \* \*

[FR Doc. 2012–30189 Filed 12–13–12; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 100812345–2142–03]

RIN 0648–XC381

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2012 Commercial Accountability Measure and Closure for Atlantic Wahoo

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements accountability measures (AMs) for the commercial sector for Atlantic wahoo (wahoo) in the exclusive economic zone (EEZ) off the Atlantic states (Maine through the east coast of Florida). Commercial landings for wahoo, as estimated by the Science and Research Director, are projected to reach the commercial annual catch limit (ACL) on December 19, 2012. Therefore, NMFS closes the commercial sector for wahoo on December 19, 2012, for the remainder of the 2012 fishing year, through December 31, 2012. This action is necessary to protect the Atlantic wahoo resource.